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GOVERNMENT'S ABILITY TO COMBAT LABOR MANAGEMENT RACKETEERING

HEARINGS

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

OCTOBER 28, 29, AND NOVEMBER 2, 3, 1981

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35. Barron's article, "On the Waterfront—From Maine to Texas, a Crescent of Corruption," by Kathryn M. Welling, January 21, 1980, p. 4
36. New York Times article, "Scotto Denies Getting Payoffs on Waterfront In Testimony at Trial," by Arnold H. Lubasch, October 30, 1979, p. 1
37. New York Times article, "Two Views of Scotto: Progressive Union Leader or Hoodlum," by Robert D. McFadden, January 18, 1979, p. 15
38. Information received from the Equitable Life Assurance Society of the United States regarding their role in the independent management of the investment assets of the Central States, Southeast and Southwest Areas Pension Fund

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[1] May be found in files of the subcommittee.

[2] Retained in the confidential files of the subcommittee.

GOVERNMENT'S ABILITY TO COMBAT LABOR MANAGEMENT RACKETEERING

WEDNESDAY, OCTOBER 28, 1981

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS
Washington, D.C.

The subcommittee met at 8:34 a.m., pursuant to notice, in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. William V. Roth, Jr. (chairman) presiding.

Members of the subcommittee present: Senator William V. Roth, Jr., Republican, Delaware; Senator Warren B. Rudman, Republican, New Hampshire; Senator Sam Nunn, Democrat, Georgia; and Senator Lawton Chiles, Democrat, Florida.

Members of the subcommittee staff present: S. Cass Weiland, chief counsel; Michael C. Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; Ray Maria and Fred Asselin, staff investigators; and Katherine Bidden, chief clerk.

[Members of the subcommittee present at commencement of hearing: Senators Roth, Rudman, and Nunn.]

Chairman ROTH. The subcommittee will be in order.

The Permanent Subcommittee on Investigations today resumes hearings relating to the Department of Labor and its oversight of serious problems in the area of labor-management relations.

This hearing today continues a long history of subcommittee interest in this area, including most recently in-depth hearings held under the able leadership of Sam Nunn in 1979, 1980, and earlier this year.

Subcommittee work in the area of labor-management relations dates back to the fifties where under the leadership of Senator John McClellan, the subcommittee undertook a variety of investigations. I think it is fair to say that the Landrum-Griffin Act resulted from investigations carried out by a temporary offshoot of this subcommittee, the Select Committee on Improper Activities in the Labor Management Field.

The Landrum-Griffin Act was enacted in 1959. More recently, of course, the subcommittee under Senator Nunn has worked on issues involving the Teamsters Union Central States Pension Fund and the exposure of corruption in the International Longshoremen's Association. This subcommittee held hearings on the Labor Department's investigation of the Teamsters pension fund in August and September of 1980 and hearings on corruption on the waterfront in February 1981.

As the subcommittee convenes this week, our purpose is to explore what steps, if any, have been taken by the Department of Labor and others in response to revelations made during the course of these two sets of hearings and in the subcommittee's report on its oversight inquiry regarding the Teamsters' pension fund, which was released in August of this year.

Our subcommittee's report on the Labor Department's oversight of the Teamsters pension fund made several findings and recommendations. Among these were: One, that the Department of Labor should play the dominant role in policing pension funds; two, that the Inspector General for the Department should investigate allegations relating to organized crime incursions in the pension fund area; three, that the IRS-Department of Labor jurisdiction over the monitoring of the employee benefit plans should be studied: four, that the Department of Labor should require formal agreements in order to be able to enforce understandings reached in connection with the Teamsters pension fund; five, that the statute of limitations governing ERISA violations should be lengthened; and finally, six, that the Department of Labor should consider requiring Roy Lee Williams, who is now president of the Teamsters International, to answer questions relating to his conduct as a fiduciary.

These recommendations were made last May. The Department of Labor has since replied that it does not have the authority to take the actions suggested in the report regarding the fitness of Mr. Williams to serve as a fiduciary.

So perhaps legislation is required for this. The members of the Permanent Subcommittee on Investigation will consider this. We are delighted to have Department of Labor Secretary Ray Donovan to testify today. He will have a brief statement followed by some remarks by others from the General Accounting Office.

At this time, without objection, I will include my opening remarks in their entirety.

[The statement follows:]

OPENING STATEMENT OF SENATOR WILLIAM V. ROTH, JR.

The Permanent Subcommittee on Investigations today resumes hearings relating to the Department of Labor and its oversight of serious problems in the area of labor-management relations. This hearing today continues a long history of subcommittee interest in this area including, most recently, in-depth hearings held under the able leadership of Sam Nunn in 1979, 1980, and early this year. Subcommittee work in the area of labor-management relations dates back to the fifties where, under the leadership of Senator John McClellan, the subcommittee undertook a variety of investigations. It is fair to say that the Landrum-Griffin Act resulted from investigations carried out by a temporary off-shoot of this subcommittee, the Select Committee on Improper Activities in the Labor-Management Field. The Landrum-Griffin Act was enacted in 1959.

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The subcommittee's report on the Labor Department's oversight of the Teamsters pension fund made several findings and recommendations. Among these were:

No. 1. That the Department of Labor should play the dominant role in policing pension funds;

No. 2. That the Inspector General for the Department should investigate allegations relating to organized crime incursions in the pension fund area;

No. 3. That the IRS-Department of Labor jurisdiction over the monitoring of the employee benefit plans should be studied;

No. 4. That the Department of Labor should require formal agreements in order to be able to enforce understandings reached in connection with the Teamsters pension fund;

No. 5. That the statute of limitations governing ERISA violations should be lengthened; and, finally,

No. 6. That the Department of Labor should consider requiring Roy Lee Williams, who is now president of the Teamsters' International, to answer questions relating to his conduct as a fiduciary.

This last recommendation was made in a May 1981 interim report of the subcommittee. Since that time the subcommittee staff has met with Labor Department officials and learned that the position of the Department is that the course of action recommended by the subcommittee concerning Roy Lee Williams is not possible given current statutory authority. Such a position was confirmed in a letter dated July 9, 1981, from Secretary Donovan. Given this position, it appears that legislation is called for and we will be considering that very shortly. Obviously, the Department of Labor requires additional powers in the area of fiduciary responsibilities of union officers.

It should be noted that the Department of Labor is currently engaged in several cases actively under litigation involving current and past trustees as well as the pension fund itself. It is not the intent of this subcommittee to inject itself in any way into this litigation, but, rather, to make the position of the subcommittee very clear to the Department and to the representatives of the fund in order to avoid a repetition of the unfortunate events surrounding the Labor Department's oversight responsibilities in the past.

This week we will also focus on hearings conducted by Senator Nunn and Senator Rudman in February relating to corruption of the International Longshoremen's Association. Those hearings highlighted a series of criminal convictions of members of the union and raised certain questions as to the sincerity of union officials with respect to eliminating the pattern of abuses which were shown to have occurred. We expect to hear from Lane Kirkland, president of the AFL-CIO regarding his views on this subject as well as from Thomas D. Wilcox, executive director, of the National Association of Stevedores.

I regret that because of meetings of the full Committee on Governmental Affairs I will not be able to chair all of this week's subcommittee sessions, but I look forward to reviewing the record and continuing to work closely with Senator Rudman, Senator Nunn, and the other members of the subcommittee in this area.

With these thoughts in mind, I would turn to my colleague, Senator Nunn, for any opening remarks he may care to make.

I call upon my distinguished colleague, Senator Nunn.

OPENING STATEMENT OF SENATOR SAM NUNN

Senator NUNN. Thank you very much, Mr. Chairman.

I want to first thank you for scheduling these hearings. I know you have numerous responsibilities in the full committee and I know you are going to participate as much as possible.

I want to thank both you and Senator Rudman for your splendid cooperation in both these hearings and in everything we have done this year in trying to have a continuity in the investigations that were ongoing in the past.

Senator Rudman has, of course, played a vital role as vice chairman. He has been very involved in all of these hearings since he has been elected to the Senate. The cooperation we have had both from the chairman and vice chairman has been really beyond any reasonable expectations a member of the minority could have.

I want to thank both of you very much for that at the outset.

Our investigating subcommittee today resumes hearings on what steps the Department of Labor is taking to combat the intrusion of racketeering in the labor-management field.

We are looking forward this morning to the testimony of Raymond J. Donovan, Secretary of Labor. It will be Secretary Donovan's first appearance before the subcommittee. We welcome him and anticipate, and certainly hope for a constructive working relationship with him and his Labor Department.

In addition, we are pleased we will have as a witness next Tuesday, Lane Kirkland, president of the AFL-CIO. We will announce a time and place for that hearing, as these hearings take place this week.

The subcommittee will hear, also, this morning, from the General Accounting Office in connection with the examination of the Labor Department's investigation of the Teamsters Central States Pension Fund.

The Internal Revenue Service will give testimony in connection with the Government's procedures to evaluate and safeguard the financial soundness of the union welfare benefit and pension funds, including the Central States Fund.

We will also hear from the National Association of Stevedores. They will be called upon to report on conditions on the east coast and gulf coast docks.

The subcommittee will certainly be interested in determining what effect, if any, both the FBI investigation and prosecution and the followup hearings had as far as corruption on the waterfront.

Since 1975, the subcommittee has been evaluating the Labor Department's effectiveness in ridding unions and union benefit plans of fraud, corruption, and organized crime.

In previous reports and staff studies, the subcommittee has criticized the Labor Department for not assuming a more vigorous role in combating labor racketeering, particularly in pension and welfare fund areas. The subcommittee has said many times the Labor Department has the obligation to detect, investigate and properly refer for prosecution evidence of criminal wrongdoings in unions and union benefit plans.

And our subcommittee has not been alone in urging the Department to take the initative in developing evidence of racketeering. The Justice Department has all but pleaded for more help from the Labor Department. Federal prosecutors here in Washington and around the country from the organized crime strike forces have told the subcommittee that without the support and cooperation from the Labor Department, the Government's program to rid unions and union funds of corruption simply cannot succeed.

Labor Department officials have told this subcommittee on several occasions that Federal law does not give them the responsibility to develop criminal cases in union benefit funds, except in limited instances.

The subcommittee looked at the two most important laws in this regard, the LMRDA, the Labor Management Reporting and Disclosure Act, also known as Landrum-Griffin, and the Employee Retirement Income Security Act, also known as ERISA.

LMRDA gives the Labor Department responsibility and authority to investigate unions. ERISA gives the Department responsibility and authority to investigate union employee benefit and pension plans.

The subcommittee was especially interested in ERISA and what requirements it gave the Labor Department regarding racketeering in benefit and pension plans.

The subcommittee concluded that a major source of fraud today is in such plans.

The subcommittee asked the General Accounting Office and the American Law Division of the Library of Congress to make their own legal interpretations of both ERISA and LMRDA and to tell us what authority they thought Congress had delegated and specifically given to the Labor Department in these areas.

Both the GAO and the Library of Congress agreed with the Justice Department and with this subcommittee that the statutes clearly directs the Labor Department to detect, investigate, and properly refer for prosecution evidence of criminal wrongdoings in unions and employee benefit plans.

However, senior Labor Department officials, when informed of the other interpretations of the laws, have remained steadfast in their determination to focus on civil remedies and to deemphasize criminal inquiry.

That brings us up to date. Of course, we are interested in hearing from the Labor Department with the new Secretary today as to what their views are.

My own view is that in the past this has been a most unfortunate policy for the Labor Department to adopt.

To move the Department from the Government's effort to rid the labor-management field of corruption in organized crime is to weaken the Government's most effective tool.

The Labor Department, by statute, has access to unions and employee benefit funds, which no other component of the Government enjoys. The FBI, for example, cannot monitor union or benefit plan activities or review their records without cause. Only the Labor Department can keep tabs on these activities.

Congress gave the Labor Department that authority and it is the intent of Congress that the Department use that authority.

Compared to other Federal law enforcement agents, the Labor Department's investigators are, or should be better informed about labor laws and are, or should be, better informed about unions themselves and their benefit trust funds and how they operate.

The Labor Department has not only consistently denied, over the past 6 years, that its responsibilities extend into detecting and investigating labor and benefit fund racketeering, the Labor Department suggested and implied strongly in 1978 that the problem of labor racketeering has been overstated by law enforcement in the hope bringing more Labor Department resources to the task.

I think that suggestion that the problem has been overstated must be responded to.

This subcommittee held hearings earlier this year on waterfront corruption on the east coast and gulf coast docks.

The subcommittee found that corruption was widespread, that organized crime elements had seized important segements of the International Longshoremen's Association and that certain senior officials of the ILA were made, or inducted members of the so-called Mafia crime families and were also associates of the families.

According to William Webster, the Director of the FBI, several Federal prosecutors and a number of maritime executives, organized crime figures controlled much that went on in the shipping industry.

The organized crime figures had infiltrated the ILA to such an extent that they were able to use the legitimate processes of collective bargaining to perpetrate payoffs, extortion, bribery, and other illegal schemes.

In the subcommittee's investigation of waterfront corruption, we found little evidence to suggest that the Labor Department had done anything significant to control or reform the crime-ridden environment of the east and gulf coast docks.

I do not feel the problem of waterfront corruption was overstated. Nor do I feel we have overstated the problem in any other instance of documenting labor racketeering.

The subcommittee certainly does not, and has not, painted all of this activity and corruption with too wide a brush. It remains my view, and I think this would be the view of most members of the subcommittee, probably all, that the overwhelming majority of union locals in this country are honestly run by leaders who are deeply committed to the highest principles of trade unionism.

So I make no blanket indictment. But I do believe that it is in the best interest of the labor movement to confront those pockets of racketeering where they exist.

To neglect to do so is to betray the interests of all union members.

The subcommittee will begin today's hearing with a presentation from the subcommittee staff in which the subcommittee's work in the labor-management field over the last 6 years is described.

This presentation shows how organized crime figures and fraudulent schemes were able to drain large sums of money from employee benefit trust funds.

Consistently the Labor Department was found to have done little to detect and investigate the crimes and irregular practices. The Department did little to prevent them from happening again.

The subcommittee has built a rather extensive record. As this staff presentation will demonstrate, the evidence is strong and overwhelming in support of the allegation that the Labor Department in the past has shirked its responsibility.

Now, however, we have new leadership, we have new officials leading the Labor Department. It is my hope that they will study the record. I hope they will have, and I hope they will conclude that their Department has a mandate to detect, investigate and refer for prosecution evidence of crime in unions and union trust funds.

The Government alone, no matter what the Government does, cannot assure an end to labor-management corruption. Labor and management must shoulder a major part of this responsibility. And that is why we are particularly pleased that we will have both the AFL–CIO head, Mr. Lane Kirkland, and the National Association of Stevedores, a management organization that has been very much involved in past hearings we have had, both will be represented in this hearing and I consider that their testimony will be of great interest and enormous importance.

Mr. Chairman, that concludes my statement. I didn't want to make that long a statement, but I feel a brief history is in order.

Chairman ROTH. Thank you, Senator Nunn.

Senator Rudman?

Senator RUDMAN. Mr. Chairman, I have a very brief statement.

I just want to say that it has been a pleasure for me to work under your leadership and to work with our ranking member, Senator Nunn, on this investigation.

I think, boiled down to its simplest essence, what these hearings are all about, is whether or not we are going to be able to see Government work, in this case whether or not the Department of Labor is going to do what the Congress wants it to do. We are dealing here with the pervasive influence of organized crime within organized labor and I feel it should be free of organized crime. We are dealing with a proven record of corruption in the handling of the money of working men and women in this country. I believe that these hearings will illustrate the Department of Labor has not done its job and we are certainly hopeful that under new leadership it will.

I suspect hearings will point the way for the Secretary and for that Department to do what finally must be done in this field.

Chairman ROTH. Our first witness is Mr. Fred Asselin, who is an investigator for the Permanent Subcommittee on Investigations.

Mr. Asselin, if you will please raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ASSELIN. I do.

TESTIMONY OF FRED ASSELIN, INVESTIGATOR, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Chairman ROTH. Mr. Asselin, I know you have an extensive statement. We do ask, in the interest of time, that you summarize as briefly as possible the highlights of that statement.

Mr. ASSELIN. Yes, sir.

Mr. Chairman, I am Fred Asselin. I am an investigator on the staff of the Senate Permanent Subcommittee on Investigation.

Since 1969, I have been associated with the subcommittee on a full-time basis as a staff investigator on loan from the personal staff of Senator Ribicoff.

I have a lengthy statement, which I request be inserted into the hearing record as if read, and that I be given the opportunity to summarize the statement. [1]

The subcommittee was prepared in 1975 to investigate allegations of organized crime influence in the Teamsters' Central States Pension Fund, or to support a Senate resolution creating a select committee to undertake a nationwide inquiry into allegations of labor racketeering, including those regarding the Central States Pension Fund.

The Labor Department, using for the first time the landmark pension reform statute of 1974, the ERISA, gave the subcommittee every assurance that it would proceed with its own inquiry into the Central States Pension Fund in a professional, procedurally sound manner.

The subcommittee was informed that Labor Department investigators would work closely with the Criminal Division of the Justice Department. The inquiry was referred to by Labor Department officials as a joint undertaking between the Labor and Justice Departments.

With these assurances in mind, and with the realization that two panels investigating the same subject would face difficulties, the subcommittee decided not to conduct its own inquiry. And, the resolution setting up the select committee was not adopted.

While deferring to the Labor Department in the Teamsters Central States case, the subcommittee embarked on its own investigations into fraudulent welfare benefit programs such as health and life insurance, severance pay and other benefit plans.

The subcommittee documented fraud in several union benefit plans. The subcommittee began to note a pattern of indifference on the part of Labor Department officials. It was apparent that they did not feel that their mission included the detection and investigation of crime in employee benefit plans.

In addition, the Labor Department was found to be organized in such a way as to not encourage personnel to make crime detection and investigation a priority. For example, the Labor Department's files, containing hundreds of thousands of reports from unions and union benefit plans, were not arranged to detect bogus and highly questionable insurance programs being used in local unions.

In 1978, the Justice Department was disappointed to learn that the Labor Department intended to reduce sharply the number of agents assigned to organized crime strike forces around the country.

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[1] See p. 193 for the prepared statement of Mr. Fred Asselin.

Strike force attorneys testified before the subcommittee. They cited the increasing encroachment of organized crime figures into union activities and pointed to the need for more, not less, Labor Department investigators.

As a result of the subcommittee's hearings, the Labor Department reconsidered its earlier decision and the reductions in strike force assignments were not made.

But the effort to cut back on strike force allocation of agents reflected the Labor Department's commitment to a policy that ignored evidence of criminal wrongdoing. Labor Department officials told this subcommittee the Department had no role to play in detecting and investigating title XVIII violations such as embezzlement and fraud in union benefit plans. That was, officials said, the responsibility of the Justice Department.

The policy was firmly entrenched in the Labor Department. Forgotten were the assurances the subcommittee had been given about the close cooperation with the Justice Department in the Central States case. It was revealed by this subcommittee, for example, that Federal prosecutors came to believe that Labor Department investigators were under orders not to discuss the Central States case with the Criminal Division.

Virtually all the Labor Department's investigative resources which had been assembled for the Central States inquiry were shifted to support the civil suit, which had been filed against the fund's former trustees in February of 1978.

The possibility of criminal prosecutions was out. Third party investigation was not pursued. Fundamental investigative techniques were not adhered to.

Persons in the Solicitor's Office with little criminal investigative training took charge of the inquiry. Of the several reputed organized crime figures who had been party to highly questionable Central States loans, very few of them were even interviewed by Labor Department agents and none of them were named in the civil suit.

Fending off criticism of the Department's policy of doing no work in the criminal investigative area in the Central States case, Labor Secretary F. Ray Marshall told this subcommittee that he doubted the value of sending people to prison if, in so doing, the Government did not force those who were responsible for the fund's losses to make restitution. By 1981—now 6 years after the Labor Department first got into the case—no one had gone to jail because of the Department's inquiry, and not a single dollar of mismanaged money had been returned to the pension fund.

Senator NUNN. Let me ask you one question at that point, because I think this is one of our more important findings. What you are saying is not only did they ignore the criminal side of it, and had no real third-party investigations, but the Labor Department failed to name the people who would have probably enjoyed the benefit of any corruption or the majority of the benefits of any corruption, had corruption taken place, in a civil suit?

Mr. ASSELIN. That is right, Senator.

Had they brought suit against persons who were third parties, for example, those persons would have been in a much better position to make the fund whole again.

Senator NUNN. Even if they get a verdict in the civil suit, the question is whether it would be collectable and be able to benefit the members of the unions, rank and file, is very, very questionable, is it not?

Mr. ASSELIN. That is correct.

In fact, former Secretary, Mr. Marshall, acknowledged that last year before this subcommittee.

Senator NUNN. Thank you.

Mr. ASSELIN. In its final report on the subject, the subcommittee termed the Labor Department's investigation a failure. And it will be months, possibly years before a judgment is reached in the civil suit.

Secretary Marshall acknowledged to this subcommittee in 1980 that even if the Department wins the civil suit, which is not a certainty—but even if it wins, the fund will not be made whole because the defendants, the former trustees, have neither the resources nor insurance sufficient to restore the fund to the financial status it would have had had the alleged mismanagement not occurred.

Further documenting the absence of the Labor Department in the Government's effort to rid unions and union trust funds from organized crime's influence, the subcommittee held hearings earlier this year on waterfront corruption on the east coast and gulf coast docks.

The hearings revealed the pervasive use of payoffs, bribery, extortion, and other illegal methods and the central role in the corrupt environment played by numerous senior members and officers of the International Longshoremen's Association.

Federal prosecutors, FBI spokemen, and several maritime executives testified about an important waterfront investigation—known as UNIRAC, for union racketeering—that led to the convictions of more than 20 ILA leaders, including Anthony Scotto, George Barone, Fred R. Field, Jr., and several more officers of the ILA International.

Teddy Gleason, the ILA president, insisted the corruption that had been revealed in UNIRAC was not typical of the union leadership or reflective of a corruption problem in his union.

The corruption that was commonplace on the waterfront—among ILA leaders and management as well—was not a matter that had occupied the resources of the Labor Department. There was no indication that Labor Department representatives had taken any steps to bring reform to the corruption-ridden environment on the waterfront.

In one instance, a shipping firm executive went to a senior Labor Department officer in New York and reported on the existence of a racket in workmen's compensation claims. The racket was so costly that it was threatening to put his business into bankruptcy.

According to the testimony of the shipping executive, the Labor Department officer acknowledged the existence of the racket but said there was nothing he could do to help. It is not known whether the Labor Department did anything to bring to the attention of its own compliance officers or the FBI or any other investigative organization information regarding the workmen's compensation racket.

In summary, over the past 6 years, the subcommittee has shown corruption and irregular practices to exist in certain Teamsters' Union locals, certain ILA locals, and certain other locals and their benefit and pension plans.

While demonstrating corrupt practices in these labor organizations, the subcommittee has, at the same time, recommended that the Labor Department assume a more aggressive role in combating questionable practices where they exist. The Labor Department has not followed the subcommittee's recommendations.

In addition, the Labor Department would have reduced its role further had this subcommittee not intervened when the effort was made to decrease the number of compliance officers assigned to organized crime strike forces.

It is the view of the subcommittee staff that labor racketeering is a principal source of revenue and power for organized crime.

Unless checked, organized crime figures will continue to steal from welfare and pension funds of local unions, leaving many working families without the benefits and pensions they count on.

It is also the view of the subcommittee staff that the Labor Department will change direction and take on a more assertive role in investigating labor racketeering only when forceful leadership comes from the office of the Secretary of Labor and only when that leadership is supported by senior and mid-level officials with experience in and enthusiasm for investigative work.

That completes the summary, Mr. Chairman.

Mr. Chairman, I have 26 documents in support of the staff presentation. I request that the documents be received as exhibits.

[The documents referred to were marked "Exhibits 1 through 26," for reference and may be found in the files of the subcommittee.]

Chairman ROTH. I think, for purposes of the record, that it should be made clear that your statement is based on past performance of the Labor Department. We are not intending to judge at this time the new administration, is that correct?

Mr. ASSELIN. That is correct, Mr. Chairman.

Chairman ROTH. So I would underscore that in fairness to the new administration.

Senator NUNN. Mr. Chairman, I completely agree with that. I think that is the case and I believe we will hear from Secretary Donovan this morning. I hope we will turn over a new leaf. I think the historical record should reflect that this mismanagement, nonfeasance and in some cases malfeasance on the part of the Labor Department has transcended any political party. There is one thing that remains the same, no matter who is in the White House, normally that is the activity of the Labor Department in this field.

This whole documentation goes back through more than one administration and includes both the Republican and Democratic administrations.

I hope that we will see a real change now. Of course, Secretary Donovan has that opportunity to take a fresh look at the whole situation. I hope that will be done.

Chairman ROTH. Thank you, Mr. Asselin.

Senator NUNN. Mr. Chairman, I think the request was made to put the whole volume of the report and exhibits in the record. I assume that was without objection.

Chairman ROTH. Yes. Without objection.

We now will call upon Mr. Ahart, who is the Director of the Human Resources Division of the General Accounting Office.

Mr. Ahart, will you please rise, as well as any others who may join in any testimony. Would you all please raise your right hands?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AHART. I do.

Mr. KOWALSKI. I do.

Mr. WYRSCH. I do.

Mr. DANA. I do.

Chairman ROTH. Mr. Ahart, as I said to the preceding witness, I would request that you summarize your statement as we have a full day of testimony. Without objection, your full statement will be included as if read.[1]

TESTIMONY OF GREGORY J. AHART, DIRECTOR, HUMAN RESOURCES DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY RAY KOWALSKI, HUMAN RESOURCES DIVISION; RAYMOND J. WYRSCH, OFFICE OF GENERAL COUNSEL; AND FRANKLIN DANA, PRINCIPAL ACTUARY, INSTITUTE FOR PROGRAM EVALUATION

Mr. AHART. Thank you, Mr. Chairman.

I would like to introduce my associates at the table.

On my left is Ray Kowalski of the Human Resources Division. To my immediate right, Ray Wyrsch, Office of General Counsel; to his right, Mr. Frank Dana, an actuary with our office.

We are pleased to be here today to discuss our review of the Government's investigation of the International Brotherhood of Teamsters' Central States, Southeast and Southwest Areas Pension Fund, which is one of the largest private pension funds in the Nation.

For many years the fund's trustees have been subject of controversy and allegations of misusing and abusing the fund's assets and making questionable loans to people linked to organized crime. Consequently, in mid-1975, the Department of Labor initiated an investigation to determine whether the fund was being administered in a manner consistent with the fiduciary and other requirements of the Employee Retirement Income Security Act.

At that time, the Internal Revenue Service had an investigation of the fund in process. Labor's and IRS's investigation disclosed that former fund trustees and officials mismanaged fund assets and failed to prudently carry out their fiduciary responsibilities and had not operated the fund for the exclusive benefit of plan participants and beneficiaries as required by the law.

On September 25, 1976, IRS revoked the fund's tax-exempt status.

Before restoring the fund's tax-exempt status, Labor and IRS in April 1977 imposed several demands on the trustees to reform the fund's operations. The trustees agreed to the demand and made several significant changes. Also, Labor's investigation resulted in Labor filing a civil suit against 17 former trustees and two former officials to recover losses that resulted from alleged mismanagement, imprudent actions and breaches of fiduciary duties.

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[1] See p. 272 for the prepared statement of Mr. Gregory J. Ahart.

Our review disclosed that despite apparent benefits from the investigation, the investigation and subsequent Labor and IRS dealings with fund trustees had significant shortcomings and left unresolved problems. Thus, we question whether the benefits obtained and improvements imposed by the Government will result in lasting reforms without diligent efforts by Labor and IRS. Both Labor and IRS have renewed investigations of the fund. In September of last year, we testified before this subcommittee on our preliminary findings and conclusions.

Subsequently, the subcommittee issued a report which discussed inadequate staffing and coordination and management problems similar to those noted in our review of Labor's and IRS's investigation. We have now updated our findings and conclusions and have developed recommendations. We prepared a draft report on October 7 and provided copies to you and Senator Nunn pursuant to your requests. On October 8, we sent copies to the Secretary of Labor, Commissioner of Internal Revenue, and the Attorney General for comment.

We also sent a copy to the fund.

Mr. Chairman, just yesterday, after my formal statement was prepared, we received comments on a draft report from the Secretary of Labor. He expressed his agreement with the thrust of the report and our recommendations and described actions that are being taken since earlier this year which are in general consonance with our views on what needs to be done. He pointed out, as we would certainly agree, and as you pointed out earlier, that our draft does not purport to evaluate—and fully describe—the recent or current undertakings by the current administration. We have not yet received comments from Justice, IRS, or the fund.

Labor's objective in having a Governmentwide coordinated investigation did not succeed because IRS refused to participate in a joint investigation. This did not adversely affect Labor's investigation until IRS decided in June of 1976, without prior notice to the fund, or to Labor, to revoke the fund's tax-exempt status. IRS's action disrupted Labor's investigation and adversely affected the fund's cooperation with the Government's investigators. Labor officials said that they had to spend more time trying to resolve the coordination and cooperation problem with IRS and the fund than on the investigation itself.

The investigation disclosed many significant problems. However, Labor narrowly focused on the fund's real estate mortgage and collateral loans because of the significant dollar amounts involved, and Labor's primary goal of protecting and preserving the fund's assets. This single purpose, in Labor's opinion, may have been justified. However, in our view, this approach ignored other areas of alleged abuse and mismanagement of the fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement, which had been raised by Labor's own investigators.

The investigation was also incomplete. Labor targeted for investigation 82 of the fund's loans. It terminated its investigation of the asset management procedures of the fund, even though the investigators did not complete planned third party investigations on many of these 82 loans. This omission may have precluded Labor from obtaining valuable information needed for its investigation, as well as information on potential criminal violations.

Until Labor abolished the special investigation staff in May 1980, this staff had been responsible for investigation of the fund. Although the Congress gave Labor 45 staff positions that it stated it needed, or was needed by SIS, Labor later reduced the SIS staff allocation to 34 and Labor never filled all of these positions. Had it filled the 45 authorized positions, we believe they would have been able to resolve some of the unresolved areas and complete more of the third party investigations.

The SIS professional staff, for the most part, appeared to be experienced. However, Labor failed to adequately train the SIS personnel in areas related to the investigation and to maintain an effective work environment or to insure effective coordination between SIS and the Solicitor's Office. We believe that these shortcomings weakened SIS's ability to conduct an effective investigation and contributed to the problem in managing the investigation, ineffective coordination and poor working relationships with the Solicitor's Office.

An internal labor-management report dated May 1979, the so-called Kotch-Crino report, confirms significant management problems. It concluded that future SIS effectiveness was doubtful.

The staff was abolished in May 1980.

Turning to the relationship between Labor and Justice, notwithstanding memorandums of agreement, Labor and Justice had continual coordination problems which restricted the flow of information from Labor to Justice.

In 5 years of investigative activity, Labor made 11 formal referrals of loan information to Justice which had potential for criminal investigation. Labor and Justice offcials stated that much other information was discussed informally. Justice officials told us, however, that overall Labors' information was not useful in its criminal investigative efforts.

The Kotch-Crino report also cited investigation problems similar to those we found.

Labor and Justice officials testified in March and August of 1980 that coordination problems existed in the past, but the cooperation was then more effective. However, as indicated by our review, Labor and Justice experienced continuing coordination problems despite several agreements and despite working with the committees.

Accordingly, we are making several recommendations for actions designed to better assure the needed degree of cooperation and coordination between Labor and Justice and I have set out these recommendations on pages 9 and 10 in my formal statement.

Turning to the relationship between IRS and Labor, IRS on June 1976, without prior notice to Labor, revoked the fund's tax-exempt stature. After reviewing the impact of its unilateral action on the Government's investigation, IRS did agree to fully cooperate and coordinate with Labor in August of 1976.

[At this point Senator Nunn left the hearing room.]

Mr. AHART. The agencies had extensive discussions and considered many options, from a court-enforced consent decree to requiring a neutral board of trustees, in reforming the fund and in having IRS restore its tax-exempt status.

IRS restored the fund's tax-exempt status in April 1977, but, rather than have the trustees enter into a written agreement, IRS, with Labor's approval, based the requalification on the trustees' oral agreement to operate the fund in accordance with ERISA and to comply with eight specific conditions prescribed by Labor and IRS. These conditions are appended to my statement.

Early in the investigation, Labor had proposed reforming the fund's operations through a legal undertaking, such as having the fund operated pursuant to a court-enforced consent decree. However, Labor officials dropped this approach after the trustees agreed to restructure the mortgage trustees and 12 of the 16 existing trustees resigned.

The remaining trustees resigned as a condition for requalification of tax-exempt status. However, Labor and IRS did not play an active role in the selection of four new trustees even though they had developed qualifications the new trustees should meet. Also, Labor knew some of the former trustees who allegedly mismanaged the fund were members of the Teamsters' Union organizations that apparently selected some of the new trustees.

We question whether the reforms and changes that IRS required were the best the Government could have achieved. In our opinion, Labor and IRS findings of mismanagement and abuse by the former trustees and IRS action in removing the fund's tax-exempt status put the Government in a strong bargaining position. However, Labor and IRS, in the final negotiations with the trustees, may not have gained lasting reforms and improvements to the fund's operations or removed the influence and control exercised by the former trustees. We believe also Labor and IRS decision not to require the trustees to enter into a written agreement may not have been prudent.

Further, we believe Labor's and IRS' decision not to play an active role in the selection of successor trustees were shortsighted. Concern was expressed about the influence of former trustees over selection of current trustees which Labor dismissed at the time as being unimportant. However, Labor belatedly recognized and became sufficiently concerned over the former trustees' influence and actions of the current trustees to resume its investigation.

In view of this concern, we are recommending that the Secretary and Commissioner establish criteria and qualifications requiring that future fund trustees be independent, professional, neutral, and so on; closely monitor the selection of future trustees; and veto the selection of trustees not meeting the criteria.

As another condition for requalification in June 1977, the trustees appointed independent investment managers, the Equitable Life Assurance Society of the United States and the Victor Palmieri Co., to handle most of the fund's assets. Both appear to be successfully managing the assets and investments. Despite Equitable's and Palmieri's performances, the trustees have attempted to reassert control over the fund's assets by trying to compromise the managers' independence, hiring their own staff of real estate analysts and trying to terminate the services of Palmieri because the firm refused to renegotiate the fixed management fee.

Although Equitable handles the fund's assets and investments, the fund's trustees still control all of the money the fund receives and decides how much should be retained in the benefits and administration account. The trustees are supposed to use this account to record the employers' contributions, pay the employees' benefits, and make appropriate reserve for the fund. The remaining funds are to be given to the independent managers for investments.

The trustees have retained a significant amount of moneys in this account. For example, there was $142 million in the account at the end of 1979.

According to Labor, the trustees have imprudently attempted to use the moneys in the B. & A. account to make a $91 million questionable loan to settle a court suit. We found that Labor and IRS have not adequately monitored the trustees' control over the B. & A. account.

We believe they need to take action above and beyond the conditions required by the April 1977 agreement to remove the trustees' control over and influence on all the moneys the fund receives. Labor and IRS should consider proposing a reorganization of the way the fund handles and controls the employers' contributions and other moneys, to remove the trustees' control over any of these funds.

We are making recommendations along these lines, as well as actions designed to assure the continuation of the use of independent investment management. These recommendations are detailed, Mr. Chairman, on pages 15 and 16 of my statement.

As mentioned earlier, Labor decided to concentrate its investigation on the practices of fund fiduciaries to make real estate mortgage and collateral loans. Labor's investigation also identified patterns and apparent use of the funds by former trustees and raised questions of potential criminal violations in the fund's other operations. However, these other problems went uninvestigated. IRS has responsibility to assure that the fund complies with the eight conditions of the April 1977 requalification letter. However, fund officials notified IRS on August 24, 1979, that they would no longer submit the required progress reports because they considered the eight conditions substantially satisfied and the fund, in effect, barred IRS from conducting audit activities at the fund's premises.

IRS disagreed and as of August 1980, believed the fund had satisfied only four of the eight conditions.

In April 1980, Labor renewed its investigation at the fund and in July 1980, IRS renewed its investigation. We found, however, that the investigation will not cover all of the potential areas of abuse and mismanagement by the former trustees. Also, IRS and Labor said they are coordinating their efforts. But we noted that both agencies issued subpenas or summonses for the same records and are reviewing the same activities and operations.

Neither Labor nor IRS officials will discuss with us the status of the current investigations. However, on August 18, 1981, Labor filed a civil suit against 17 defendants, who are present trustees, and certain attorneys, agents, and other fund fiduciaries, concerning the foreclosure actions of two loans totaling $7 million made to the Indico Corp. These loans are one of the areas covered in Labor's second investigation.

We believe that both Labor and IRS need to take heed of the coordination problems and shortcomings in negotiations with the fund in the original investigation to assure that these mistakes are not repeated in their current investigations and in future dealings with the trustees.

We are making recommendations to Labor and IRS for this objective and these are set out, Mr. Chairman, on pages 18 and 19 of my statement.

Turning to the fund's financial soundness, ERISA requires that employee pension plans satisfy minimum funding standards each year and that each plan submit an actuarial report. IRS is to use the actuarial reports to enforce ERISA's minimum funding standards, and to determine the plan's actuarial soundness. IRS, when it requalified the funds tax-exempt status, did not consider the fund's financial soundness.

Since 1975, the trustees have had four acturial evaluations of the fund's financial soundness. The last financial report issued in March 1980 stated that the fund should satisfy ERISA's requirement. However, the actuary said that the funding policy allowed very little margin for error and if actual experience differed, funding problems would occur after the ERISA standard became effective for the fund in 1981.

The actuary also recommended that the funds' trustees adopt certain funding positions to assure compliance in future years with ERISA.

The report showed that the fund's unfunded liability had increased to $7.6 billion.

In our opinion, IRS needs to closely monitor the financial status of the fund to assure that it meets ERISA's funding standards in 1981 and in future years.

As part of its monitoring, IRS should review the latest actuarial report on the fund ascertain whether the fund should adopt the actuary's proposal on revising the funding policy and, if so, consider what action should be taken and is available under ERISA to assure that the fund implements the proposal.

We are recommending this to the Commissioner of Internal Revenue.

That completes a summary of my statement, Mr. Chairman.

I will be pleased to answer any questions that you or other members may have.

Chairman ROTH. First, am I correct in characterizing our report as saying that it sets forth essentially the same concerns that were expressed in this subcommittee's report or findings of conclusions of August 1981?

Mr. AHART. I think that that is certainly a fair statement, Mr. Chairman.

Our findings are consistent with those of the subcommittee.

Chairman ROTH. As both Senator Nunn and I have indicated earlier, this subcommittee has not been satisfied, to put it mildly, with the performance of the Department of Labor under the two preceding administrations. And one of our principal concerns and interests in these hearings and those we will hold in the future will be to determine whether or not—and we are always optimistic—that the Department of Labor, under its new leadership, will begin to aggressively undertake the duties that have been delegated it by past legislation.

Your report is essentially based on studies made prior to the new administration, is that correct?

Mr. AHART. That is correct, Mr. Chairman.

Chairman ROTH. How would you compare the level of cooperation you have received from the Department of Labor during the last several months, for example, to the type of cooperation you received before?

Mr. AHART. I think that is a difficult question to answer very well, Mr. Chairman. The Department of Labor has not discussed with us the nature or what they are finding in the new investigation or review that they undertook in the spring of 1980. Their reason is that they do not want to jeopardize any remedies that might be available through litigation, or otherwise, and we have not gotten involved in the investigation.

They have been very cooperative with us in answering questions and making information available which related to the investigation that we were monitoring and which is the subject of our report, and which you pointed out, and we agree deals with, basically, the past administration's approach.

We are encouraged. We did receive comments from the Secretary yesterday. We are encouraged by the tone of those comments and he indicated willingness to seriously consider the recommendations we made.

Chairman ROTH. I wonder if Mr. Kowalski would have any further comments to make on this question.

Mr. KOWALSKI. Mr. Chairman, there has been a definite change in the cooperation since the last administration. As Mr. Ahart has said, senses an attitude of cooperation from the officials, especially seeking information. It seemed when we testified the last time, every time, I walked down the hall, the doors were slammed and nobody would seem to want to talk to me.

Now, it has changed. I can get any information I want.

Chairman ROTH. I would like to put you on notice that it is my intent down the road sometime in the future, 6 months or further, to call you before this subcommittee again to determine your views on how aggressively the Department of Labor is administering the laws we passed to protect the working man's pension.

I tell you that now so you can keep this in mind.

On page 10 of your draft report, GAO says the following: "ERISA requires that, if during an investigation, Labor detects potential criminal violations, such as embezzlement or kickbacks, this information is to be referred to the Department of Justice for consideration under title 18 of the U.S. Code."

Can there be any doubt about ERISA's intent in this regard?

Mr. AHART. I don't think so.

From the language of the statute, it is very clear that they have that responsibility, Mr. Chairman.

Chairman ROTH. In discussing the lack of communication between the Labor and Justice Departments, GAO's report says the problem was particularly difficult for Justice because Labor was "the focal point for the joint investigative effort." Would you explain your basis for saying that? Is there, in your judgment, good communication now?

Mr. AHART. Let me ask Mr. Kowalski to respond to that, Mr. Chairman?

Mr. KOWALSKI. Mr. Chairman, this investigation gave Labor, for the first time, access to the Teamsters' fund which is a tremendous advantage for the Government. So the Justice Department was looking to Labor to detect potential criminal violations which it should under ERISA refer to Justice for further investigation and prosecution.

As we point out in the report, Labor was not fully cooperative during the investigation and, in fact, denied some of the information to the Justice Department. But now we understand the cooperation is much better. They are more effectively cooperating.

Chairman ROTH. They are working together?

Mr. KOWALSKI. That is our understanding.

Chairman ROTH. Would you give us your reasons for saying, on page 87 of your draft report, that "There is evidence that the same people who allegedly mismanaged the Fund helped select the new trustees?"

Mr. KOWALSKI. That is based on evidence we got from Labor, and from members of the Teamsters' Union, who testified before various committees indicating that the former trustees were members of the union's organization that selected the new trustees.

Labor, also, in, I believe May 1970, in a letter to the House Committee on Ways and Means, the Subcommittee on Oversight, acknowledged that there were some former trustees who were members of the organization who selected the new trustees. However, at that time, they dismissed the allegation because they didn't find any violations of ERISA, according to the Assistant Secretary of Labor.

Chairman ROTH. How would you characterize the financial soundness of the Central States Fund today in view of its obligations?

Mr. AHART. Let me just briefly refer to the fact that they have had, since 1975, four different actuarial evaluations. They are not consistent.

The first one indicated that it was sound. The second one questioned its soundness, the third one agreed with the second one. The fourth one, which was in March of last year, said it would meet the requirements of ERISA, but it was a very marginal thing. It had certain reservations about it. I would like to turn to Mr. Dana, our actuary and ask if he would like to comment further on that.

Mr. DANA. As Mr. Ahart said, the latest evaluation which we have was made as of January 1, 1979, dated March 3, 1980. The comments of the actuary as Mr. Ahart has said, were that the plan meets current ERISA minimum funding standards, but that care must be exercised in the future because the amortization period, which the present level of contributions provides, would be 39.7 years and ERISA requires a maximum of 40 years for a long-established plan such as this.

Of course, if this plan were amended to increase benefits, the new benefits would have to be amortized over an even shorter period of 30 years.

If the experience goes as has been estimated, then according to this evaluation, as Mr. Ahart says, the plan should continue to meet ERISA minimum funding standards.

If, however, there should be a loss, an unforeseeable loss, if, for example, the number of active members should decline seriously, something like that, the plan could be across the border. In other words, it is so close now to the upper level for meeting the minimum requirements, that anything unfavorable in the future would require either additional contributions or what would be more difficult to arrange for, a reduction in benefits, in order to bring it into compliance.

Mr. AHART. I think, to summarize, Mr. Chairman, certainly that is a conditional kind of report. Everything has to work exactly right for it to stay in compliance. That was really the basis for our recommendation to IRS to closely monitor this, carefully evaluate that report, and fulfill its responsibilities when the minimum funding standards apply, and be sure the fund is in accordance with the minimum requirements of ERISA.

Mr. DANA. May I make one more comment?

Chairman ROTH. Yes.

Mr. DANA. It does not necessarily mean the plan is in immediate danger.

Chairman ROTH. As I understand it, it is not dealing from a position of strength, though.

Mr. DANA. That is right.

Chairman ROTH. That any unforeseen problems——

Mr. DANA. I think it could be fairly stated to be thinly funded, but on the basis of this evaluation, at least, it meets minimum standards. Thank you.

Senator Rudman?

Senator RUDMAN. I simply want to say to you, Mr. Ahart, that your draft report and your statement this morning displays the rare qualities of analysis supported by empirical data. That is very helpful to the subcommittee. I want to commend you and your staff. It has been very helpful to me.

Chairman ROTH. Unfortunately, Senator Nunn has been called out. We will leave the record open for 2 days so that if he wants to submit any questions in writing, we would request that you answer them in writing.

Mr. AHART. We will be happy to do so, Mr. Chairman.

Chairman ROTH. Thank you very much, Mr. Ahart.

At this time, it is my pleasure to call the Honorable Raymond J. Donovan, the Secretary of Labor. Mr. Secretary, if you and the other representatives of the Department of Labor would raise their right hands, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Secretary DONOVAN. I do.

Mr. DOTSON. I do.

Mr. RYAN. I do.

Mr. MCBRIDE. I do.

Chairman ROTH. Please be seated. First let me say, Mr. Secretary, I greatly appreciate your making arrangements to be with us this morning. I understand that this required considerable rescheduling on your part, and I think it is most helpful that you do so.

Let me just make a couple of brief comments as to my personal interest and concern in this area. As a member of the Senate Finance Committee, I was very much involved in the legislation that was adopted that hopefully will protect and secure the workingman's pension. In my judgment, it makes no difference what the law says or requires unless we have the enthusiastic administration of those laws by those charged with that responsibility.

[At this point, Senator Nunn entered the hearing room.]

Chairman ROTH. It is well known that this subcommittee on both sides of the aisle have been very dissatisfied and unhappy, even outraged by the failure of the Department of Labor in the past—and I would say that under both Republican and Democratic administrations—to administer those laws in the manner that we think is desirable. The criticisms that have been made, that is the failure to adequately followthrough on these laws have been, of course, directed at these past administrations.

And as both Senator Nunn and I have said before you were here, these indictments, as serious as they are, are directed at past administrations. So that we welcome the opportunity for a new approach, a new beginning, if you want to call it that. I am happy to say that the General Accounting Office, to the extent they were able to answer one of my questions, have said that the cooperation has been far better to date between your offices, your department and the GAO.

I do want you to know that this is a problem that this subcommittee will continue to overview, not only with respect to the problem of the immediate Trust Fund, but more generally we will be holding hearings down the road to insure that your department, as well as the others involved, attack these problems with the aggressiveness, the vigor and vitality that we think is necessary to insure that the laws are properly administered.

So having said that, I just want you to know that we are looking forward to an entirely changed attitude in your department. We are looking forward to a continuing working relationship and we will be watching with great interest the efforts of you and the others who uproot the corruption and illegality that has been found in some of these pension plans in the past.

Mr. Secretary, we are pleased to have you here today and welcome your testimony.

TESTIMONY OF HON. RAYMOND J. DONOVAN, SECRETARY OF LABOR; ACCOMPANIED BY MR. T. TIMOTHY RYAN, JR., SOLICITOR OF LABOR; DONALD L. DOTSON, ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS; AND THOMAS F. McBRIDE, INSPECTOR GENERAL OF THE DEPARTMENT OF LABOR

Secretary DONOVAN. Thank you, Mr. Chairman and Senator Nunn and members of the subcommittee.

I am pleased to appear before you today concerning a matter of great concern to this subcommittee, to me as Secretary of Labor and to the American people. Accompanying me today on my direct left is T. Timothy Ryan, Jr., Solicitor of Labor, on my right, Donald L. Dotson, Assistant Secretary for Labor Management Relations, and Thomas F. McBride on my far left, the Inspector General of the Department of Labor.

The labor movement is an essential element of the American society, and the day-to-day lives and futures of American workers and their families depend on the integrity of officials of labor organizations and employee benefit plans. We, as responsible government officials, must insure that there are stringent enforceable and enforced provisions of the law which afford protections to members of unions and participants and beneficiaries of plans.

During the course of my testimony, I will discuss a number of actions we have taken which I think clearly demonstrate our unwavering resolve of ridding labor organizations and employee benefit plans of corrupting and undesirable influences. I will further discuss our role with respect to criminal activity and our relationship with the Department of Justice.

I will also discuss in detail our progress in litigation relating to the Teamsters' Central States Pension and Health and Welfare Funds. From this entire discussion, I hope you will appreciate our commitment to insuring the integrity of labor organizations and benefit plans.

We are not here to discuss the mistakes of the past. We are here to tell you of our new determination and our positive actions. We have responded in a similar fashion to the General Accounting Office's review of the Department's handling of the Central States funds investigations. We agree with the thrust of the recommendations of the GAO, and many of them have already been independently put in place at my direction. However, the report itself deals in the main with events which took place in the past. We, at Labor, are concerned with the present and the future.

In the Department of Labor's view, one of the most important pieces of reform legislation in a number of years is the legislation introduced by Senator Nunn which is presently pending before the Committee on Labor and Human Resources, and which is of great interest to this subcommittee. This bill is S. 1163, the Labor Racketeering Act of 1981. The legislation would amend the Labor-Management Reporting and Disclosure Act. [LMRDA] and the Employee Retirement Income Security Act [ERISA], to strengthen the prohibitions against individuals who have been convicted of certain crimes from serving in positions relating to labor organizations and employee benefit plans. The administration strongly endorses legislation to achieve these goals.

It is imperative that we assure the millions of individuals in this country who contribute to employee benefit plans that their funds will be invested, controlled, and used by individuals who will not compromise the trust and responsibility placed on them. And, we must assure those workers who belong to labor organizations that union matters are being handled by people who have the interests of the workers in mind without thought of how they, the officials, might profit from their positions and actions.

It should be emphasized that this legislation is designed to be protective not punitive. We are not seeking to further penalize convicted people. Our Nation's and our States' criminal judicial systems provide for penalties for violations of laws. The disqualifications from serving labor organizations and benefit plans are not intended as additional punishments.

We are seeking, however, to protect the individuals whose day-to-day working lives are often controlled by union officials, and whose futures are dependent on benefit plan officials. In this respect, S. 1163 is similar to other laws which restrain the activities of convicted persons such as the Federal laws restricting the possession of firearms by convicted individuals.

One of the most significant aspects of the legislation is that the disqualification would take place immediately upon conviction.

Under both LMRDA and ERISA, as they are presently written, the disqualification begins on the date of judgment of the trial court or final sustaining of appeal. The appeals process, as I am sure you are aware, can be dragged out over an extended period of time. By the time the process is exhausted and certiorari is denied by the U.S. Supreme Court, it is not unusual for 2 years to have lapsed after the date of conviction.

In the meantime, an individual who has been convicted of embezzlement, for example, can continue to handle the funds of a benefit plan or labor organization. This is entirely unacceptable.

While it is true that a conviction may be eventually overturned, we should not allow these individuals to continue in office and be in a position to jeopardize the funds and rights of workers during an extended appeals process. If a conviction is reversed, the disqualification should be lifted, but initially it should be effective on the date of conviction, and we strongly support this policy of S. 1163.

Another significant aspect to this bill is that it extends the length of the bar resulting from conviction. Presently, LMRDA and ERISA provide for a 5-year ban. The bill would extend this period to 10 years under both statutes. We strongly favor extending the period. In fact, we believe this subcommittee should consider recommending even a longer period of disqualification. Any such period should be of sufficient length to insure that a disqualified individual is not tempted to lurk in the shadows, exercising indirect influence, with the expectation that at the expiration of a relatively short period of time, that person will be able to assume or resume a position.

Chairman ROTH. Could I inject a question at that point? Do you have any specific recommendation at this time what that period should be?

Secretary DONOVAN. It is in deep discussion at the Labor Department now, Mr. Chairman. We would like to advise you at a later date if that is OK.

Chairman ROTH. That is satisfactory. Please proceed.

Secretary DONOVAN. During our initial review of S. 1163, some sections gave us concern due to their breadth and vagueness. The staff of the subcommittee has kindly given us a draft of substitute legislation which we understand the sponsors of S. 1163 will introduce.

We have not had an opportunity to analyze this language in detail, but it appears to address many of the concerns we have had about the original legislation. As soon as we do have the chance to review the substitute, I will be pleased to send you our formal comments.

Let me just interject at this point, Mr. Chairman, that I believe the sharing of this language with us by your staff, the staff of the subcommittee, stands as testimony to the spirit of cooperation which exists between the subcommittee and the Department of Labor. In this regard I can assure you that the administration will assist this subcommittee and other appropriate committees in the development of this important legislation.

[At this point, Senator Chiles entered the hearing room.]

Secretary DONOVAN. I know we share the common goal of insuring that labor organizations and benefit plans are free from undesirable influences so that workers and beneficiaries are afforded full protections.

Of course, this new proposed legislation is not the only significant element of the Government's fight against labor corruption and racketeering. I would now like to take a few minutes to outline for you some of the actions we are presently taking and the philosophy underlying these actions. However, before I do, I think it would be helpful if I briefly explain the structure of the units of the Labor Department which are involved.

Primary authority within the Department for these matters rests in the Labor-Management Services Administration, LMSA. LMSA administers several laws including ERISA and LMRDA. While both laws are under the direction of the Assistant Secretary for Labor Management Relations, Mr. Dotson, and both share area office officials, they are two distinct investigative tracks and National Office entities.

Responsibility for ERISA within the Department rests in the pension and welfare benefits program. Its prime responsibility is administering the reporting and disclosure and fiduciary provisions of the act. Investigations are conducted across the Nation by a staff of investigators and auditors especially trained in these complex financial transactions.

[At this point, Senator Rudman withdrew from the hearing room.]

Secretary Donovan. The Office of Labor-Management Standards Enforcement—LMSE—deals exclusively with enforcement of the LMRDA. In the area offices it has its own track of investigators who handle no pension matters. It is our belief that keeping the tracks separate because of the different expertise involved is the most efficient use of our resources.

In addition, the Department's Office of the Inspector General works in conjunction with these offices and the Justice Department's strike forces in conducting investigations of organized crime matters involving pension and welfare plans and labor officials.

The Department of Labor has been criticized in the past for a failure to pursue criminal investigations and employee benefit plans. It is true that under ERISA our major responsibilities in protecting the integrity of unions and plans are civil in nature. We recognize that the Department of Justice has primary responsibility concerning the enforcement of criminal statutes.

Nevertheless, we have the responsibility and the commitment in the course of our civil investigations to be alert to criminal violations of these two statutes and other laws as well. I believe we are obligated to bring any evidence of criminal wrongdoing to the attention of the Department of Justice and the Federal Bureau of investigation. I cannot overemphasize that Labor Department investigators are not simply robots who have been programed to detect only civil violations. They are not blind to evidence of criminal behavior simply because it is within the jurisdiction of the Justice Department. Within their authority to investigate ERISA and other violations, Labor investigators will look for all illegal and improper behavior. If we find such evidence, we will inform Justice, and the matter will be pursued accordingly.

Although the Labor Department and the Justice Department are separate entities, we are part of one government which seeks to achieve a common good—the protection of labor organization members and plan participants and beneficiaries. This end can best be achieved by the maximization of cooperation.

As a general matter, we do not believe that there is necessarily any inconsistency between our civil enforcement responsibilities and our cooperative efforts with Justice to insure that criminal violations are detected.

Senator NUNN. Mr. Secretary, I don't want to let the opportunity go by on that point without telling you how delighted I am that this position is being taken by your Department because that has not been the position of the Department for a long number of years. I think that is a profound, a very significant and a very positive change.

Secretary DONOVAN. Thank you, Senator Nunn. We appreciate that comment.

The Department of Labor will not condone or ignore any criminal wrongdoing. No person in violation of ERISA, LMRDA, or any other statute for that matter, can think for an instant that they are free from detection by our investigators. If we find evidence of criminal wrongdoing, the matter will be pursued and pursued vigorously.

Chairman ROTH. Could I just interrupt a minute there because in adopting this kind of a policy, which I applaud, I would ask, have you sent out any kind of directive to the investigators in the field to insure that they fully understand this change of policy in the Department of Labor and where their responsibilities lie?

Secretary DONOVAN. I have not, but the office in charge has, and and we trust they fully understand it, but we don't depend upon that. There will be a constant reminder to those people in the field that this is the policy from the top.

Chairman ROTH. I think that is very important that it permeates the entire organization.

Secretary DONOVAN. We recognize that very much, Mr. Chairman.

Senator NUNN. Mr. Chairman, may I ask one other question on this point? Mr. Secretary, this is by far the strongest statement we have ever had by the Labor Department on its criminal responsibilities. I notice in your last sentence here, you say, "If we find evidence of criminal wrongdoing the matter will be pursued and pursued vigorously." That is not the same thing as saying we will look for criminal wrongdoing and pursue it vigorously. Do you intend it to be the same thing or are you implying you will also give instructions that your investigators are to look for criminal wrongdoing as they carry out their duties?

Secretary DONOVAN. It is my intent that they are to look. In my view, it is not a matter of happenstance. I assure you it is my intent that, within the authority granted by the statute, the investigators look for criminal wrongdoing.

Senator NUNN. Thank you. I think that is important.

Secretary DONOVAN. And by coincidence, my next point is that we believe that it is extremely important to protect a plan's or organization's assets by identifying and moving immediately against persons who use their offices to drain off funds entrusted to them. That is why we place such importance on the passage of legislation such as the Labor Racketeering Act.

In addition, we have the responsibility and duty to require reports and to conduct audits and examinations which will uncover the existence of fraud, embezzlement, or any other matter which endangers labor organizations and covered plans. The Labor Department must and will promptly pursue administrative remedies and civil litigation, but it also has the responsibility to recognize potential violators of applicable criminal statutes and see that the Department of Justice is notified in order that prompt action can begin without delay.

Let me briefly outline for you the procedures we follow in this regard in the ERISA program. When our field investigators discover potential criminal violations during an investigation, or when they receive complaints which are potentially of a criminal nature, they are required to notify the national office by written memorandum of the potential violation. The national office will then notify the Justice Department, both orally and by written memorandum. In 1981 PWBP referred 12 cases to Justice. In addition, I understand that investigators in the area offices frequently provide leads to the Department on an informal basis.

Further, whenever the investigators and program officials refer an ERISA case to the Office of the Solicitor, a copy of the referral is transmitted to the Criminal Division of the Justice Department, so that they can determine the extent of their interest in the case or the plan in question.

I would also point out to the subcommittee that the Department's Labor Management Services Administration and our Inspector General are actively engaged in criminal investigations dealing with a number of labor laws. LMSE involves itself with crimes not generally categorized as "organized crime" while the Inspector General investigates organized crime and labor racketeering, through the Department of Justice strike force.

There is a memorandum of understanding between the Office of the Inspector General's Organized Crime and Racketeering Office and the Labor Management Services Administration's pension program. Pursuant to this memorandum, the Inspector General is provided with a list of benefit plans which are scheduled for an audit within the next 90 days and which are affiliated with unions within industries that have been identified by the Inspector General. The Inspector General provides the pension program with a list of all employee benefit plans involved in matters which it has targeted for investigations. There is also, among other things, provision for a general sharing of information.

Let me at this time, give you an example of a case—*Donovan* v. *Feeney*—which illustrates how our consultation and referral procedures operate. During 1976 the Department, in reviewing the records of a pension fund, found evidence of an imprudent real estate loan. In a followup investigation of the loan, the Department found evidence of a kickback made by the borrower to the union trustee of the plan. That information was immediately referred to the Department of Justice's organized crime strike force. Following that referral a criminal investigation was conducted by investigators of the Department's Office of the Inspector General under the direction of the strike force and in full cooperation with the Department's civil investigators.

In February 1979, we filed our civil action against the trustees of the plan and shortly thereafter we obtained preliminary equitable relief, including a receiver, and then, in cooperation with the strike force, we stayed proceedings in the civil case pending the outcome of the criminal investigation.

As a result of this investigation, the trustee and coconspirator were indicted and convicted of soliciting a kickback. Following the criminal investigation, we proceeded with the trial of our civil case. We anticipate the court to enter an order shortly in which we expect to recover a substantial amount of money on behalf of the plan. This case clearly demonstrates how the referral system can work to protect the assets of the plan, a civil matter, and to convict individuals who have illegally dealt with the assets, a criminal matter.

To further our cooperative efforts, on March 4, Attorney General Smith, Secretary of the Treasury Regan, and I met to discuss problems which have occurred in prior administrations. As a result of this discussion, a high-level litigation strategy task force was created. This was not an empty gesture. Since its establishment, this group has met on more than 20 occasions, and it has proved to be of immense assistance in our efforts relating to the Teamsters' Central States pension fund, which I will discuss later in my statement. Recently, I have met again with the Attorney General and the Secretary of the Treasury, and we have renewed our commitment to work together.

As I have noted, the Department of Labor's emphasis has been in the civil area. Our ERISA investigators and attorneys in the Office of the Solicitor are well-trained individuals in fiduciary, insurance, and general ERISA issues, and I believe they have been quite successful. In fiscal year 1980 alone they protected or restored over $22 million in assets. They have focused mainly on large plans—predominantly multiemployer plans which account for nearly half of the litigation the Labor Department has brought since ERISA was enacted.

Mulitemployer plans against which we have filed actions or secured voluntary compliance include plans affiliated with the Laborers, Culinary Workers, Carpenters, Teamsters, Paperworkers, Amalgamated Clothing Workers, Electrical Workers, Machinists, Plumbers, National Maritime Union, and others. In addition, successful actions have been brought against service providers of these plans.

We identify these plans through a targeting procedure. While the method of targeting varies nationwide, we believe the methods have been successful to date in developing significant cases. In addition, we are working on fully developing a computer targeting capability so that patterns of abuse that have indicated violations in the past can be identified and the plans investigated. In this way we can focus our resources most efficiently. As we become more sophisticated in targeting and gain more experience, we believe that this type of computer targeting from the annual report forms will become an invaluable tool.

We have also developed in the LMRDA enforcement scheme a new on-site audit program—the compliance audit program which we call CAP—which enable us to conduct more audits effectively. CAP is intended to identify potential embezzlement violations, uncover criminal or major civil violations of the LMRDA, and provide a visible enforcement presence in the labor community. The program also should enable us to generally ascertain the level of compliance with the LMRDA of these organizations audited.

Mr. Chairman, with this background in mind, I would like to take a few moments to review for you the progress which has been made in relation to the government's litigation relating to the Teamsters' Central States Funds. There are two primary cases involved.

[At this point, Senator Chiles withdrew from the hearing room.]

Secretary DONOVAN. The first, *Donovan* v. *Fitzsimmons*, concerns the pension fund. In February 1978, based on the original investigation instituted in 1975, the Department of Labor filed suit against 17 former trustees and two officials of the Teamsters' Central States Pension Fund, to recover losses resulting from their alleged mismanagement of fund assets and breaches of their fiduciary duties. While we have made no precise determination of the amount of recovery that may be awarded as a result of this suit, it could be in excess of $15 million.

The suit is presently still in the discovery stage, and no trial date has been set. The case has been complicated by the consolidation of discovery in this action with that in several private suits involving the fund. Nevertheless, we have taken depositions of more than 70 persons and have reviewed more than 1 million pages of documents. We further expect another 350,000 documents to be produced in the near future.

In the second major case, *Donovan* v. *Robbins*, we filed an action in October 1978 against 17 trustees of the Teamsters Central States Health and Welfare Fund. The complaint focused on the relationship between the fund and Amalgamated Insurance Services Agency, Inc. Mr. Alan Dorfman is the principal of Amalgamated.

Pursuant to a contract, Amalgamated is required to process medical reimbursement claims submitted by participants. The complaint, which seeks monetary and injunctive relief, alleges that (1) the contract was awarded to Amalgamated without prudent consideration of alternatives or reasonable competitive bidding; (2) the ongoing relationship with Amalgamated is imprudent because the Health and Welfare Fund lacks reasonable control over Amalgamated's activities; and (3) the Health and Welfare Fund has imprudently raised its payments to Amalgamated.

We are proceeding with discovery in the case. Although no trial date has been set, hundreds of thousands of documents have been collected and are being analyzed in preparation for the taking of depositions.

There is yet another case in which the subcommittee may be interested. We have recently filed suit in U.S. District Court in Florida alleging breaches of fiduciary duties by current trustees and other fiduciaries with respect to certain real estate transactions. The defendants in this case have responded with a third-party action against a number of former and present Labor Department and IRS officials.

Further, we have informed the trustees that, absent an appropriate settlement, we will file an action to recover losses incurred by the fund as a result of the purchase of a private aircraft by the Trustees.

Mr. Chairman, you should also be aware that over the past 3 months, Labor and IRS task force representatives have engaged in discussions with fund officials. These talks focused almost exclusively on resolving the equitable relief aspects of the litigation through a consent decree. We have also addressed the issue of the Health and Welfare Fund's termination of its relationship with Amalgamated and Mr. Dorfman.

It must be understood, however, that the Department may not unilaterally require—through regulations, order or otherwise—the safeguards described above. There are only two ways to achieve enforceable requirements regarding independent trustees, independent asset management, a limited role for trustees, and similar reforms. One is a voluntary undertaking by the trustees incorporated in a consent decree. The other is the imposition of a court order following successful litigation. The Department of Labor has vigorously pursued both courses.

[At this point, Senator Rudman withdrew from the hearing room.]

[At this point, Senator Chiles entered the hearing room.]

Secretary DONOVAN. In August, we provided representatives of the funds with drafts of a proposed consent decree. In summary, the major elements of the proposed decrees were as follows:

The institutionalization of pension fund professional asset management;

Strict controls on the pension fund "benefits and administration" account, those moneys under the trustees' temporary control for the payment of current benefits and administrative expenses;

Removal of trustees convicted of relevant crimes;

A requirement that the funds cooperate in ongoing government investigations and that they not bear the costs of attorneys fees for their officials who are found to have violated ERISA;

Selection of independent and unaffiliated trustees, and the selection of all trustees by a court controlled procedure that would insure that trustees are beyond reproach;

A requirement that the trustees sell the private aircraft and compensate the pension fund for the losses associated with its use; and

An injunction restraining the defendants in the Florida case discussed above from future violations of ERISA and an order requiring restitution.

Unfortunately, the fund has declined to agree to the proposed decrees, stating that it will not agree to any decree absent a full settlement which would include large and entirely unacceptable concessions by the Government. Therefore, we are continuing to pursue litigation to achieve the aims set forth in the proposed consent decree.

Litigation is generally a protracted process; it is particularly so in this case where the present and past trustees as well as the fund are represented by counsel who have missed no opportunity to contest every claim, request, and motion—including those seeking discovery—brought by the Department. However, these legal maneuvers have not in any way inhibited our determination to proceed, and we have made substantial progress in these cases.

A related matter which should be brought to your attention involves the intentions of the pension fund to enter into a new 5-year agreement for the management of fund assets with the Equitable Life Assurance Society of the United States and Victor Palmieri & Co., Inc. We are informed that this new agreement, which would supercede the current agreement that is scheduled to expire in October 1982, would be contingent on the Department of Labor granting certain exemptions and advisory opinions relating to the activities of Equitable and Palmieri under this new contract.

On August 18, 1981, Equitable and Palmieri filed with the Department of Labor a request for exemptions and advisory opinions. We have been reviewing these requests and have met with representatives of Equitable on two occasions to discuss the factual predicates for these exemptions.

As you may be aware, the trustees of the Central States Pension Fund have recently brought suit in Chicago against myself, Mr. Ryan, Mr. Dotson, and Mr. Alan D. Lebowitz, Assistant Administrator, Office of Fiduciary Standards. The suit asks the court to order the Department to approve the new assets management agreement and seeks a monetary judgment against the four of us, for financial loss allegedly sustained by the pension fund as a result of the failure of the Department to approve the new management agreement earlier.

Due to the pendancy of this case, it would not be proper for us to discuss it further in a public forum. However, we would agree to go into more detail in executive session sometime in the future if you so desire.

I would also like to bring to your attention that we have an intensive investigation of the current activities of the Central States Pension Fund underway in our Chicago regional office. That investigation is directed at the activities of the fund since the current trustees took office. I can assure you that there is close cooperation within the Department and with the Justice Department and the Internal Revenue Service in this investigation.

In conclusion, Mr. Chairman, let me assure you that the Department of Labor will not waiver from its obligations to protect American workers and benefit plan participants and beneficiaries. We will use every available tool to insure the integrity of labor organizations and plans, and we will work with the Congress to develop additional means as well.

Again, I would like to thank the subcommittee for this opportunity to discuss these very important issues with you. I am aware that there has been somewhat of an adversarial relationship between the subcommittee and the Department in the past. However, I sincerely hope that that is behind us, and that we can move forward in a spirit of cooperation. I know we share common goals.

Mr. Chairman, this concludes my prepared remarks. We would be pleased to attempt to answer any questions that you or the other members of the subcommittee may have.

Chairman ROTH. Mr. Secretary, as both Senator Nunn and myself have indicated we are much encouraged by your statement. It seems to indicate a real change in approach that for the first time, at least in recent years, the Department of Labor will assume this responsibility with a kind of vigor and aggressiveness that I think is essential if the laws are to be adequately administered.

As I indicated to you earlier—I want to stress this point—I think it is extraordinarily important that this subcommitee hold hearings of this type. I would like to remind you that we also recently held some hearings on the administration of FECA which showed that in the past there has been very serious fraud and abuse of that program, one that was designed to protect and help the Federal employees.

In both these cases it is my intent, as I have indicated, that at some future date, reasonable date, we shall hold followup hearings to determine where we are at that date. I think it is important that we know here on the Hill that there has been implementation of these new approaches.

One of my concerns, Mr. Secretary, is that it is always very difficult with a large bureaucracy to implement a change of policy. In many cases you are dealing with the same people, the same administrator, the same investigators, the same lawyers. So my question is one that I also touched on earlier. What steps can you take to insure that this change of approach in implemented at every level of the Department of Labor?

Secretary DONOVAN. Mr. Chairman, at my confirmation hearing I was very strong in stating my intentions which I felt deeply then—to appoint the best people to Labor Department posts. It is fortunate for the people involved, for the labor force in America, and more importantly, I think, for the entire American people, and I say this unashamedly, that we were able to attract leadership to the Department of Labor who are talented, committed, and men of integrity.

I feel entirely comfortable with the leadership at the Department. Your question is a good one. We can have all the good intentions in the world and all the correct and talented dedicated people at the top but the change has to get down into the bowels of the Department. That process has begun, and further in this hearing you will be hearing from the people of whom I am so proud, and who are really the frontline troops implementing the good intentions that I have stated today.

Chairman ROTH. I would like to address a question of the Solicitor, if I may. The investigation has shown that one of the key problems in the past has been the attitude of the Department of Labor Solicitor that instead of being one who aggressively pursued the responsibilities imposed upon him under the law that it appeared in many cases he tampered with or obstructed the investigation that was underway.

I am not obviously speaking about the new Solicitor. But I would like to ask you, Mr. Solicitor, how you view your responsibility, how you look upon your relationship with the individual investigators? For example, in the past it has been said that it was sort of a lawyer-client relationship. I would like to know how you view your relationship with the Justice Department?

Mr. RYAN. Mr. Chairman, I am pleased to address the multiple questions that you have asked. First of all, and I hope you bear with me on this, I would rather not be critical of any of my predecessors regarding the way they handled their jobs, because it is, quite frankly, just too easy for me to be a Monday morning quarterback and criticize. As for what we are doing right now, I think the major change that has taken place is the way that I view the job of the Solicitor.

I view my job as that of a lawyer, not as a policymaker. In the labor racketeering and corruption area, the prime focus must be on the Assistant Secretary for Labor Management Relations and on the Inspector General. We the lawyers, are the technicians who will carry out their decisions, that is a very major change from what has transpired in the past in the Department of Labor.

On the subject of cooperation with the Department of Justice, as the Secretary mentioned we created a task force which the Secretary chairs and on which the Attorney General and Secretary Regan serve. This task force oversees the litigation strategy involving corruption and racketeering. I have been honored to chair the working group that serves the task force.

At working meetings have been individuals representing the Criminal Division—many times the Assistant Attorney General for the Criminal Division, the head of the Organized Crime Strike Force and, at times, individuals from the organized crime group in the Federal Bureau of Investigation. We have met in excess of 20 times to discuss organized crime and racketeering, and we will continue this type of cooperation.

Chairman ROTH. Do you have a memorandum of understanding with the Department of Justice relating to joint jurisdiction of title 18 relating to criminal violations involving labor union trust funds?

Mr. RYAN. We do, Mr. Chairman. It deals primarily, though, with the investigatory aspects of ERISA and of LMRDA and it is probably more appropriately addressed by Mr. Dotson, the Assistant Secretary for that area. However, if I could mention one aspect of it, formally the Department of Justice handles criminal activity and we handle civil activity. That is not to say that we should not work in cooperation. And I think that in his opening remarks the Secretary placed a very high standard on everyone in the Department of Labor, to work in a cooperative fashion with the Justice Department.

Chairman ROTH. I cannot underscore too greatly how important each one of us here on this side feel that that it is your responsibility to actively ferret out criminal violations and not to be merely a passive conduit of information that may come your way.

I am going to try to limit our first line of questioning to about 10 minutes if that is satisfactory so that everybody has an opportunity. One question I would like to ask you, Mr. Secretary. I notice where you and several others are being personally sued, if I understand your testimony, by those being investigated, not only being personally sued but trying to be held financially liable. What is the basis of this lawsuit and is this in your judgment an effort to harrass and to prevent Government officials from discharging in good faith their responsibility?

Secretary DONOVAN. I would turn to my Solicitor for the legalities of this but as I understand it, the thrust of the suit is that we have delayed making a decision on the exemptions that have been requested by Equitable and Palmieri in this new agreement which we received on August 18 and that they have suffered financially as a result from not having received a positive answer from us. Whether it is intended to frighten us, I don't know, but on my present Government salary, it doesn't frighten me too much. [Laughter.]

Chairman ROTH. Do you have some comment to make?

Mr. RYAN. My only comment would be that our lawyer which is the Assistant Attorney General for the Civil Division has advised us that we should discuss the specifics of the request and the specifics of the lawsuit only in executive session Mr. Chairman.

Chairman ROTH. My 10 minutes are up. We follow the early bird rule and Senator Nunn was here.

Senator NUNN. Mr. Secretary, let me ask your time element. What is the time you have to depart because I have a number of questions and I want to direct those to you?

Secretary DONOVAN. Senator Nunn, I would very much appreciate it if I could leave at 11:30 to catch a plane to New York for a long-term commitment that I have.

Senator Nunn. I can't cover all of my questions. Are you going to leave your people here?

Secretary Donovan. Yes, Senator.

Senator Nunn. Do they speak for you?

Secretary Donovan. They do.

Senator Nunn. On this question about the recent negotiations with the Teamsters' fund and I understand you would like to get into executive session before we go into considerable detail but I would like to just ask you a few questions because they are going to be testifying here in open session. Of course I had hoped to arrange where the Labor Department would testify after the Teamsters' fund because I felt you needed the right to respond and it may be that after they testify the Labor Department would like to come back on this point. I think we ought to keep that as an open possibility but your schedule of course precluded that in setting these hearings.

Let me just ask you a few questions. This doesn't call for an opinion but I just want to lay the foundation because we are going to be talking to the Teamster fund representatives.

Your Solicitor can answer this if you would like. Under the 1977 agreements no investments were to be made in real estate. Is that correct?

Mr. Ryan. Are you talking——

Senator Nunn. Agreements with the Labor Department and Equitable.

Mr. Ryan. You are talking about the agreement that exists between Equitable and the funds?

Senator Nunn. That is right.

Mr. Ryan. And the one we have approved?

Senator Nunn. That is right.

Mr. Ryan. Could you restate the question?

Senator Nunn. Under the 1977 agreement no investments were to be made in real estate. Is that correct?

Mr. Ryan. I think the question should be whether they could invest in new pieces of real estate, and I believe the answer to that is that there is a restriction. They can continue to manage the real estate which they have. My understanding is that the real estate has been——

Senator Nunn. No new investments were to be made in real estate?

Mr. Ryan. That is correct.

Senator Nunn. That is the agreement that is expiring?

Mr. Ryan. It expires in October 1982.

Senator Nunn. The new agreement that has been proposed would have no such limitation. Is that your understanding?

Mr. Ryan. That is the type question, Senator Nunn, that I think deals with the request for new exemptions. It would be best that we discuss this matter in executive session. I am not trying to evade the question.

Senator Nunn. I am not asking you for an opinion. I am just asking you for a fact, about the proposed new agreement, they are going to testify in full open session on this. I understand they will, I am certain they are going to be explaining their position vis-a-vis the lawsuit. I think the Labor Department by appearing here first has put itself in a very tactically awkward position because they are going to be, I am sure, talking about their views and I think they ought to be accorded that opportunity. So I am not asking you any opinion on this or the position of the Labor Department.

I am simply asking you a fact. As a matter of fact didn't the old agreement preclude investments in real estate and doesn't the new agreement call for permission to invest in real estate? This is public; I understand it has already been released to the media.

Mr. RYAN. The reason I am reluctant to address that is quite frankly the Solicitor's office has nothing to do with requests for exemptions.

Senator NUNN. Who does?

Mr. RYAN. The request for exemptions are before the Assistant Secretary for Labor Management Relations.

Senator NUNN. Is he here?

Mr. RYAN. He is to the Secretary's right.

Senator NUNN. I will be glad for him to answer the question. [Laughter.]

He looked like he was ducking. I don't know. [Laughter.]

Mr. RYAN. The Secretary directed me to address your question. The new proposal that is before the Assistant Secretary provides for permission for Equitable to invest in new real estate up to 25 percent of the assets. And I understand the proposal provides for present assets to be managed by Victor Palmieri, Inc., and the new assets by Equitable Assurance.

Senator NUNN. Is it true that the trustees will have a substantial voice in investment policy under the newly submitted agreement? I understand the agreement calls for a 50–50 decisionmaking process.

Mr. RYAN. First of all, I think it should be understood that there isn't any new agreement right now.

Senator NUNN. You haven't signed off on it?

Mr. RYAN. We have not signed off, nor have the Teamsters and Equitable signed a new agreement.

Senator NUNN. It is pending. It is the one they submitted to you for your approval?

Mr. RYAN. Pending before the Assistant Secretary are a number of things. The Teamsters Central States Pension Fund passed a resolution saying that they wished to enter into a new agreement with Equitable. Equitable's board of directors have passed a resolution that provides that it is their desire to enter into a new agreement with the Teamsters Central States Pension Fund contingent on the Department of Labor issuing certain exemptions and advisory opinions.

They have entered into a memorandum of understanding which says that if and when the Department of Labor provides the exemptions and advisory opinions that they have requested, then they will enter into a new agreement. The new draft agreement which has been provided to the Department of Labor, which is unsigned, provides that the trustees and Equitable Assurance will jointly decide on an investment policy. Attached to the draft agreement is an investment policy which provides standards for Equitable to utilize in deciding how they will invest the fund's moneys.

Senator NUNN. Is it true that the trustees will assume a substantial voice in investment policy under the tentative and proposed draft new proposal?

Mr. RYAN. In the sense that they will work with Equitable in forming a new investment policy, the answer is correct.

Senator NUNN. Is it true that the trustees under the submitted draft can terminate the agreement with or without cause, without permission from the Labor Department?

Mr. RYAN. The new proposal that is before the Assistant Secretary provides that the trustees of the pension fund can terminate their contract with Equitable with 6 months notice.

Senator NUNN. Six months notice?

Mr. RYAN. Yes.

Senator NUNN. With or without the permission of the Labor Department?

Mr. RYAN. That is correct.

Senator NUNN. That differs from the existing agreement?

Mr. RYAN. Yes.

Senator NUNN. Is it true that Equitable will be paid a larger percentage fee for investment in real estate than in security assets under the proposed new draft?

Mr. RYAN. Senator, I know there is a new rate structure that is part of the agreement which is keyed to their investment experience. I don't think I have the information to answer that question specifically.

Senator NUNN. How about the Assistant Secretary?

Mr. DOTSON. I am not able to discuss any of the details of the pending requests for exemptions. They are under consideration. We have had two meetings. We have asked for further information and I have made it a point not to get involved in the regular consideration of these requests for exemptions.

Senator NUNN. What is the schedule you now have for reviewing that agreement and making the decision on the request for exemptions? What is the timeframe in which you anticipate that this will be——

Mr. DOTSON. I am not able to put a timeframe on it. If you had asked me that question a month ago, I would have had to give you the same answer because it is being evaluated by the pension and welfare benefits program. They are treating it as they would any request for exemption.

Senator NUNN. Would it be fair to say that there are substantive differences, Mr. Secretary, between the existing agreement and the newly proposed agreement?

Secretary DONOVAN. As I understand it, that is correct.

Senator NUNN. We will get into that further in the executive session at some appropriate point. I know that historically there is a recognition in the Labor Department that it was in the real estate areas where a great number of abuses and alleged abuses have occurred. Just an observation on my part is it seems that the new proposed draft agreement is not only opening the door to get substantially involved in real estate investment but is actually as I understand it, giving incentive for Equitable under the fee structure to go more into real estate because they are getting paid more.

I would urge those points to your attention as you review.

Mr. Secretary, in 1980, Secretary Marshall testified before us, and I quote him.

> It is not the objective of the Department of Labor to use its ERISA investment authority to investigate violations of the criminal code and we believe that we would be on dubious legal grounds if we attempted to do so.

The Library of Congress and the GAO have stated on numerous occasions that the Department of Labor clearly has the responsibility to detect, investigate, and refer criminal matters relating to labor union trust funds. I assume by your statement this morning that your position differs substantially on that point with Secretary Marshall's previous testimony.

Secretary DONOVAN. It does, Senator.

Senator NUNN. You would not then agree with the Secretary's quote that I just gave?

Secretary DONOVAN. Not being a lawyer, I don't know the length and breadth of the ERISA law as to the criminal investigations. I know that there are limited areas where it is not only permitted, it is encouraged. But beyond the letter of the law, please read my statement to include what I consider its spirit. I think there is a critical difference between that and the views of my predecessor.

Senator NUNN. May I ask your Solicitor if he would agree as a lawyer with former Secretary Marshall's statement that it is not the objective of the Department of Labor to use its ERISA investigative authority to investigate violations of criminal code and we believe that we will be on dubious legal grounds if we attempted to do so. Do you agree with that interpretation of the law?

Mr. RYAN. I would say no. I believe your initial question to the GAO witness was whether or not the Department had the authority to detect, investigate and refer criminal activity under ERISA. Our answer is that we do and we will. However, this does not change the fact that the Department of Justice has primary criminal responsibility.

Senator NUNN. I understand that. I have got a provision in the bill that amends title 29, section 1136 and, Mr. Secretary, you endorse the overall thrust of the bill and I am sure with reservations on some details as we work our way through the process which I certainly understand. But one of the provisions that you did not address would be a provision that would make it absolutely clear that the Department of Labor has the responsibility and the authority to detect and investigate civil and criminal violations relating to the provisions of ERISA and other Federal laws including but not limited to the detection and investigation and referrals of violations of title 18 United States Code.

I assume that the Department's position would be that the law already covers this. Is that correct, Mr. Secretary or Mr. Solicitor?

Secretary DONOVAN. I am not certain. We understand the direction in which you are heading. The Department of Justice has voiced some objection to the wording here and we will be meeting with them to work out an administration position.

Senator NUNN. The objection to that particular provision is by the Department of Justice?

Secretary DONOVAN. I believe so.

Senator NUNN. Based on what I understand your testimony to be thus far, you really believe that that is already covered in the law. Is that correct, Mr. Solicitor?

Mr. RYAN. As you well know, Senator, there is not only the statute; there is also a memorandum of understanding that exists between the Department of Labor and Department of Justice. Within the spirit of the Secretary's statement which can be translated into direct endorsement responsibility through Mr. Dotson, I really don't think we are going to have a problem vis-a-vis primary criminal responsibility. I think that clearly rests with the Department of Justice and any intrusion into that primary responsibility will probably raise an issue which we will have to discuss within the administration.

Senator NUNN. Thank you.

Chairman ROTH. Thank you.

We will call on Senator Rudman next. Because of Senator Nunn's great involvement in this investigation, I will be happy to yield my next 10 minutes to you.

Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman.

I also would yield some of my time back to Senator Nunn because I realize the Secretary has a very difficult schedule. But I do want to address to you, Mr. Secretary, and to your Solicitor just a general thought based on my own experience and then bring it down to a specific matter related to this report. I understand your reluctance to criticize the policies and decisions of your predecessors. That is admirable. I have no such limitations. [Laughter.]

If I were to describe the legal staff of the Department of Labor as I have reviewed their decisions over the last 4 or 5 years I would say that they were an aggregate of reluctance. They seem to be able to find every excuse for not prosecuting, for not bringing action and as you know, Mr. Ryan and I am sure you know Mr. Secretary, with your extraordinary business background, one can always find a reason not to bring a lawsuit. I want to bring it to the present, to your administration, because as the chairman said and I agree, high hopes of a new beginning here, though sometimes institutional paralysis is very difficult to shake off.

I want to bring us to I think a valid discussion on a point which I am sure, Mr. Ryan, is familiar with. As you know, this subcommittee made some very definite findings concerning Mr. Roy Lee Williams. We made serious allegations about his fiduciary conduct. We also recommended that the Department of Labor do certain things in an administrative way in order to bring to a conclusion our concern that maybe this gentleman would be unfit to head that union.

On July 9, 1981, the Department rejected the recommendation of this subcommittee saying it did not have the lawful authority to carry out our recommendation. Lawyers can argue about whether you do or you don't. Certainly your letter had some presumption of correctness. I believe this staff and this subcommittee had reached conclusion that it did. My point is this. Philosophically, Mr. Secretary, Mr. Ryan, don't you think that there are going to be cases where the statutes of this Government are in fact not conclusory in every way, that you must go forward and find out what the law is? Don't you believe that the time has come to get rid of some of this timidity and the worst that can happen is you can come to this subcommittee and say you were thrown out of court because they claimed you didn't have jurisdiction?

Senator Nunn has taken the initiative. He has introduced legislation which I know the chairman and I subscribe to and will probably cosponsor, which will give you specific authority in this area. But the thrust of my question is what is your legal philosophy at the Department? Are you going to take some risks of losing a few cases because you may win some you think you may lose?

Secretary **DONOVAN**. Can I just make a comment before Mr. Ryan addresses the specific legal portion of your question?

I am familiar with the July request and our answer. As frustrated as you have been, our term has now been 9 months and our frustration threshold is also rising, although probably not to the point of those of you who have been working continuously in this area. Please understand that I am just not waving the American flag, but the constitutionality is a major issue that we all have to concern ourselves with. But I don't disagree with you. From my personal layman's point of view, if we are not having some losses we may not be trying hard enough.

Senator **RUDMAN**. I can assure you as far as peoples' basic constitutional rights we have no disagreement, Mr. Secretary. I think my point is simply that you have been sued personally on what I believe to be a very shaky legal ground and I expect that that action against you will be dismissed.

Secretary **DONOVAN**. So does my wife. [Laughter.]

Senator **RUDMAN**. I don't believe in bringing lawsuits that border on malicious abuse of process but I hope that one of the things that you will do in the coming months is to make an impression upon the entire legal establishment of the Department of Labor that there are some cases which are not neat and clean and all in one very small package that can be brought to conclusion. They may be tough, they may be appealed, there may be jurisdictional fights but I believe that this Government has an obligation, unless the law is clearly against you, to be very aggressive in its legal stance to root out what is a scandal in this country.

As I came to this committee in January, and Senator Nunn educated me on some of the things that have gone on in the past, I was appalled to find that these things have gone on and on and on, and this hearing room could probably repeat the testimony here this morning. I think part of it has been a reluctance on the part of Government employees to take an aggressive stance knowing they may lose a case. I certainly hope under your leadership that this will be different.

Secretary **DONOVAN**. Thank you, Senator.

Senator **RUDMAN**. I will yield it back to Senator Nunn.

Senator **NUNN**. I subscribe to all of that, Senator Rudman. I think you said it very well. That leads me to the question of the new amendment to the Teamsters civil suit. Mr. Secretary, we just received a copy of the Judge's order which resulted from the Department of Labor's attempt to amend or expand the Teamster Central States' civil suit. As we read the order the judge held, No. 1, that the fund itself could not be added as a defendant and, No. 2, the Department of Labor could inspect adidtional documents related to additional transactions other than the original 15 named in the suit but that these documents could not be used as evidence with respect to the claims in the Central State suit already filed.

As we view the consequences of that, it would be that there would be no adequate permanent remedy since the fund itself is not a party and cannot be the subject of a court order dealing with the fiduciary duty. That is, if the trustees change, any order dealing with their activities will not apply to the new trustees. In addition, the court order reflects its opinion that adding transactions to the suit will have no practical result since as the court stated and I quote "The available insurance coverage of the named defendants is a small fraction of what the Government seeks to recover in their original complaint."

That seems to unfortunately support exactly what we stated in our report, that a critical error was made. This wasn't during your tenure, that a critical error was made and has been continued in failing to seek out culpable third parties capable of compensating the fund for its losses. I know you probably will want to state what you plan to do about that court order but would you care to respond to that?

Secretary DONOVAN. I agree with you concerning the actions of the past. Our attorneys were dealing with the cards dealt to them in that particular matter. We were disappointed by the finding and we intend to appeal. I would turn to Mr. Ryan to discuss further, if he can do so openly, what our intentions are.

Senator NUNN. Let me state a couple of other things and we will turn to Mr. Ryan and his comments on all of the above.

The court also stated:

> The court has no intention of entertaining any further expansion of the complaint by amendment. Given the limited insurance coverage and the finite personal resources of the defendants it is highly questionable whether the interests of the fund members are served by a litigating strategy which can only seriously deplete the resources which would be available for restitution to the Fund if the government prevailed.

Well, it seems to me that what the court is saying is that the Labor Department strategy is the equivalent of suing an uninsured individual for $40 million for a car accident. That is one of the first things lawyers learn in the practice of law, is no matter how good your injuries are, no matter how good your claim is, it doesn't do any good at all to sue someone for substantially more than you can possibly hope to recover if everything goes correctly.

Mr. Ryan, I know you have been engaged in the practice of law. Do you agree with that? Would you like to comment on it?

Mr. RYAN. Yes, Senator. I would like to comment essentially on the five questions that you have asked.

Now, the first question goes to the decision of Judge Moran in the northern district of Illinois as to our request to amend the complaint in *Donovan* v. *Fitzsimmons*. You have accurately stated his decision. We will move for reconsideration and if reconsideration is denied and the present decision stands, we will appeal that decision.

When we first came into the Department of Labor and reviewed the present status of the litigation which, by the way, we also reviewed with the Treasury Department and the Attorney General's Office, we determined that it was our responsibility to attempt to join the fund as a defendant and to seek specific equitable relief. That is the reason we attempted to amend the complaint. As I said, we will not rest with a decision that was issued in the northern district of Illinois on that question. The issue is just too important to us.

On the second issue, which is the insurance moneys that exist, by our calculation, and with documents that have been presented to us by the pension fund, there is something close to a maximum amount of about $10 million available for monetary relief. The one point that prior hearings here have not brought out, which I think is essential for you to know, and for everyone involved with this entire area to know, is that to this day there is no one that knows how much each one of the defendants is individually worth. Nor do we know the present assets of Mr. Fitzsimmons' estate, we do not know the present assets of Mr. Presser's estate.

In related litigation—the so-called *Dutchak* and *Sullivan* cases which are also before Judge Moran—he has asked us to sit down with the fund and discuss comprehensive settlement.

We informed him that we had been discussing a consent decree with them. We have since also informed him by letter that we will be willing to sit down with everyone and discuss this matter. However, we have been through 4 months of this and we are not sure it is going to come to anything. We will only settle those matters if we feel very, very comfortable about it.

Senator Nunn. Have you entertained the notion of joining culpable third parties into the suit as defendants at this stage?

Mr. Ryan. Senator, I will address that question if I could just finish the monetary aspects of it.

Senator Nunn. All right.

Mr. Ryan. In our letter, which has gone to all of the counsel of record and to Judge Moran, we have requested that they provide us with certified statements from CPA's giving us an indication specifically of the assets of each one of the defendants and the estates.

It is our position that the only way we can sit down and discuss any comprehensive settlement with counsel for the defendants is if we know how much money the individual trustees and the estates are worth, so that we can accumulate that with the insurance moneys to find out exactly where we stand.

That is different from what was presented before to the committee. I know that Secretary Marshall said that he did not think that the individuals could provide the monetary relief necessary. At least from our review of the records we have no information yet.

Senator Nunn. The court seems to be saying that, the court itself feels that the litigating strategy of the Labor Department is having the result of joining in so many claims that the attorney's fees and litigation expenses itself are going to dissipate the assets of the defendants to the degree there is not going to be anything to recover even if you win.

At least that is what I read, the court statement that I just read, as saying that basically the litigation strategy of the Labor Department is going to result in no assets or very few assets from which to recover.

Mr. Ryan. I don't think we know that yet, Senator.

Senator Nunn. Maybe the court knows something that you don't know.

Mr. Ryan. That may be the case, but I really don't think so.

As far as joining the third parties, that again, as the Secretary said, is something that took place in the past.

As you know, because individuals have testified before this subcommittee about joining third parties who are nonfiduciaries, essentially unless a borrower is either a party in interest who has dealt with the plan in a prohibited transaction or a knowing participant in a fiduciary breach, it is our determination that the Department does not have a cause of action against the individual under ERISA.

That is not to say that as Senator Rudman pointed out, we cannot be creative. In our determinations of possible culpability under the statute.

Senator **Nunn**. Do you entertain asking for any amendment to to the statute that would cure that defect if you indeed attempt to join third parties and find out that you are precluded from doing so?

Mr. **Ryan**. That is something that we have discussed within the Department. I am not at liberty to tell you what the determination is at this time, Senator.

Senator **Nunn**. You are discussing it, though, considerably?

Mr. **Ryan**. We have discussed it. As far as a final discussion of modifications, I don't think I could go to that point. We have discussed it, though.

Senator **Nunn**. If there hasn't been a third party investigation, how can you tell that they do not meet ERISA standards?

Mr. **Ryan**. I was talking about in the future, Senator. As far as what took place in the Central States litigation, I have talked with your staff member and with individuals at the Justice Department about this. The failure to join third party nonfiduciaries was the direct result of the decision by the Department at that time to move into a civil litigation mode and to end the investigatory stage of the Central States Pension Fund matter.

As I said before, I really don't think at this juncture that it serves us well this group at the table here, to criticize those decisions because at least I have learned in the 9 months that this is a very, very complicated area specially dealing with Central States and you are subject to a great deal of criticism any way you go.

Senator **Nunn**. To further pursue that criticism, the court stated, and I quote again from the court: "Finally for the first time it, the Department of Labor, hints at sweeping equitable relief respecting the Pensions Fund itself."

We have been told for a long time that the lawsuits, and so forth were designed to permanently protect the fund and here the court is saying that for the first time in this lawsuit the Department of Labor is coming in and now asking for sweeping equitable relief.

I find that an incredible state of affairs in a lawsuit that over and over again the Department of Labor has been testifying was seeking to protect the fund. Of course, it is apparent that the court here in this case does not think that that has been the position of the Labor Department all along. Do you agree with my analysis of that?

Mr. **Ryan**. I do. That is why we moved to amend the complaint so that we could join the fund and seek equitable relief. From our standpoint, and I am just speaking personally here, although I believe the Secretary concurs with this, we will be very aggressive in how we treat this pension fund and the type of relief which we feel appropriate.

The only type of agreements we will enter into will be agreements that fulfill all of the requirements as essentially set forth in the Secretary's statement, and which are set forth in terms of the consent decree or a final decree by a court. We want a document that we can enforce.

Senator **Nunn**. But the court has now said unless the court is reversed, that it is too late to add the fund as a party in sweeping equitable relief. If that court decision is upheld, it seems to me what we have is a lawsuit filed with inadequate preparation, inadequate investigation, against parties who cannot compensate the fund and without hope of a permanent reform in the fund.

If that decision of the court is upheld, would you agree with that analysis?

Mr. **Ryan**. I wouldn't give up the point that that decision is going to be upheld.

Senator **Nunn**. I know that. I wouldn't want you to. But if it is upheld, wouldn't that be about the result of it?

Mr. **Ryan**. No; I don't think I would agree with that, Senator. I feel, again joining Senator Rudman, that we have many, many vehicles available to us. ERISA provides us with a vast resource of possible remedies to deal with the Central States Pension Fund, I guess the answer is that no I would not agree with you.

Senator **Nunn**. You would agree with it as far as this suit is concerned, if the court rules that, because you are going to have to start over with some of those Rudman remedies, aren't you? [Laughter.]

Mr. **Ryan**. As I said previously, I am not willing to give up the point that the court will rule that way. I think that once Judge Moran understands the specifics involved and our situation, and takes into consideration the best interests of all the participants and the American public, that that decision will not be finalized. At least that is my hope.

Senator **Nunn**. Mr. Secretary, let's assume that your Solicitors' hopes become reality and you get a verdict, and so forth, against the trustees, and things work out better than apparently they look like now; suppose that the trustees come in and say, "Look we were acting in our official capacity and we think the fund ought to indemnify us for all of our attorney fees and that the fund ought to indemnify us for any loss that may have occurred;" do you believe that the Department of Labor should oppose any efforts of this nature to have the fund itself, meaning the members' assets, indemnify the trustees for their malfeasance?

Secretary **Donovan**. That is a legal question for which I will turn to the Solicitor rather than give my personal views.

Senator **Nunn**. Mr. Solicitor?

Mr. **Ryan**. Senator Nunn, as far as the indemnification is concerned, I would like to break it out into two specifics; one would be general indemnification for any monetary remedy. I think it is clear and at least in our discussions with the fund's counsel it is clear that they understand that if any individual trustee is found to have violated ERISA, the fund will not be in the position, and in fact, would probably violate ERISA, if it provided some indemnification for that monetary relief.

The second question has to do with attorneys' fees. I think it is a little bit more difficult. That is one of the reasons, as the Secretary stated in his opening statement, we attempted through a consent decree to specifically require that any trustee who is now having attorneys' fees paid, place a bond of a specific amount which would cover whatever attorneys fees are now being paid by insurance companies so that if that individual is found to have violated ERISA, the fund participants are not paying for that individual's legal fees.

Senator **Nunn**. Mr. Secretary, the Department of Labor, as I understand it, recently held negotiations with the Teamsters Central States Fund to try to get the fund to voluntarily enter into a consent decree; is that correct?

Secretary DONOVAN. That is correct.

Senator NUNN. These negotiations have now broken down; is that correct?

Secretary DONOVAN. That is correct.

Senator NUNN. Would you give us your version of what caused the breakdown and your plans at the present time?

Secretary DONOVAN. I did not attend these meetings by design. They were attended by Tim Ryan, acting not only as Solicitor, but as head of the task force, and with the Internal Revenue Service. The meetings were instigated by the fund itself. There were, I believe, and Mr. Ryan can correct me, some 20 meetings.

As to the stated reason why they broke down on the part of the fund, as I understand it, they wanted an all-inclusive type settlement that we found was not in the interest of the Government. We had thought the understanding in the early part of the discussion was that we could not contemplate that type of all-inclusive agreement. But from what I understand, that is the stated reason that it broke down. But I would turn to Mr. Ryan to give you more specifics or correct my numbers.

Mr. RYAN. Senator, as the Secretary said, we met with representatives of the fund—that group was essentially chaired by George Lehr, the new executive director of the pension fund, who will be testifying here tomorrow—over 20 times. We provided them with a draft consent decree which dealt only with prospective matters relating to Equitable. The fund representatives informed us that they could agree to certain aspects of the consent decree, primarily dealing with the institutionalization of outside investment managers, that they could agree to some controls on the benefits of the administration count, that they could agree to removal of certain convicted trustees, but that they were unwilling to discuss any selection system for new trustees and unwilling to place any unaffiliated independent trustees on the board of trustees.

We told them that if they were not willing to go to the actual heart of the matter, which is who is running the fund, that we were not willing to discuss any comprehensive settlement with them. That ended the discussions right there.

We never moved to a discussion of settling the Donovan case, *Donovan* v. *Fitzsimmons*. We never moved to a discussion of settlement of *Donovan* v. *Robbins*. We never discussed monetary relief.

Senator NUNN. When did that court ruling come down that I have just quoted from?

Mr. RYAN. It came down approximately—I don't know the exact date, but in terms of our discussions with the fund representatives, it came down, I believe, just before the discussions broke off.

Senator NUNN. Did you notice any change in the negotiating posture of the Teamsters Union Central States Fund representatives after the court ruled adversely to the Labor Department?

Mr. RYAN. No, Senator. On the major issue, and that was a selection system for trustees and unaffiliated industries, they had expressed the same view prior to the judge's ruling.

Senator NUNN. So you don't think it was a connection between their posture and the favorable ruling they got from the court?

Mr. RYAN. I really don't know what motivated them, Senator. We felt that the consent decree was in the interest of the participants, that it was in the interest of the fund and certainly in the interest of the U.S. Government.

Senator NUNN. Mr. Secretary, GAO reported that the entire investigative staff was inadequately trained at the Labor Department, especially in complex ERISA investigations. What are your plans to deal with this problem?

Secretary DONOVAN. We are aware of that criticism. However, before the final report, Mr. Dotson has taken action in this area. Training is critical. We recognize this and it continues to be a large task. I will ask Mr. Dotson to review with you what we have done, what we are doing, and what we plan to do.

Mr. DOTSON. Several actions have been taken with regard to the training of the area office investigators. The Labor-Management Services Administration has contracted with the Treasury Department's Federal Law Enforcement Center to have 23 LMSA field investigators in the Center's White Collar Crime Seminar. To improve the quality of the onsite audits we have purchased a formal accounting training system for use by the area offices. With regard to the auditing programs, LMSE is in the process of developing an investigative audit program based on the CAP concept. That is the compliance audit program.

For international and national union headquarters operations, we expect to field test this new program shortly and implement it nationally later in fiscal year 1982.

In early fiscal year 1981, LMSE conducted 4-day training sessions for about 75 investigators in regard to basic audit and criminal investigative techniques as well as CAP orientation and review.

We are now developing a training package to correct certain deficiencies in the CAP program uncovered during our monitoring fiscal year 1981. This package will also highlight the new changes for CAP in fiscal year 1982 and stress supervisory review responsibilities. Since 1978, the pension and welfare benefits program has regularly scheduled training for staff and a variety of areas useful for conducting thorough ERISA investigations. The program operating plan authorizes 15 staff days for training per ERISA professional.

Senator NUNN. Could I get you to put the rest of that in the record?

Mr. DOTSON. Yes.

[The information follows:]

ERISA

Considerable time and effort has been devoted in recent years to providing necessary training in areas and issues to be covered in ERISA investigations. For the last few years, at least 15 staff-days per professional Investigator/Auditor in the Labor-Management Services Administration Field offices have been allocated for training. Furthermore, ERISA staff in each regional office have been assigned responsibility for assessing program-related training needs and coordinating training sessions to meet those needs. Training has been provided by National Office and Field staff in a wide variety of areas including auditing, investigative, and interviewing techniques, the fiduciary provisions of ERISA, and the coverage of real estate and insurance industries. The skills courses have been taught twice a year since 1978; the fiduciary course given 11 times (for all professional staff); and the insurance course was provided in four regions over the last two years.

In addition, training has been provided by other Federal agencies (e.g., the Internal Revenue Service and the Comptroller of the Currency) and qualified individuals from the private sector.

Further, Pension and Welfare Benefit Programs has regularly scheduled supervisors meetings to exchange ideas and techniques, and to help communication among field offices and between the Field and National Office.

LMRDA

The increased emphasis on field audits and criminal investigations, as well as the development of our compliance audit programs, require us to intensify our training efforts if these programs are to be effective. Since 1978, several measures have been taken with regard to the training of area office investigators.

In fiscal year 1979, LMSE contracted with the Treasury Department's Federal Law Enforcement Center to have 23 LMSA field investigators attend the Center's White Collar Crime Seminar. LMSA personnel who attended this course were nearly unanimous in endorsing it as a valuable aid in detecting and combatting white collar crime. As a consequence, in 1980 and 1981, another 35 LMSE investigators attended the two-week course at the Center. LMSA intends to have more investigators attend the course this year and in the future.

To improve the quality of on-site audits, in 1980 LMSA purchased a formal accounting training system from the Prentice-Hall Publishing Company, for use by each area office. The program consists of 7 slide-sound modules, with printed instruction, which have a duration of 45 to 60 minutes each. A committee of experienced LMSE auditors selected the modules from Prentice-Hall ALEX accounting program as the most useful for LMSA field investigators in acquiring skills to perform LMSA audits. This slide-sound auditing course is intended to familiarize investigators with basic accounting terminology, concepts, and procedures as well as practical applications and uses of accounting techniques.

The on-the-job Field Audit Training Program was another LMSE innovation aimed at improving the quality of on-site audits. The program, which was implemented during the first quarter of fiscal year 1980, consisted of a team of auditors from the LMSE national office providing on-the-job training in LMRDA union fiduciary audits to field investigators in each of six LMSA regions during fiscal year 1980. During the program 36 field investigators from 18 area offices were provided such training. Because of travel fund limitations, however, this program was not continued in fiscal year 1981 and is not planned for fiscal year 1982.

In early fiscal year 1981, LMSE also conducted four-day training sessions for about 75 investigators regarding basic audit and criminal investigative techniques as well as a compliance audit program (CAP) orientation and review. We are currently developing a training package to correct certain deficiencies in the CAP uncovered during our monitoring in fiscal year 1981. This package will also highlight the new changes for CAP in 1982 and stress supervisory review responsibilities

Senator NUNN. We will lose the Secretary here in a minute. I would also like for you to put in the record any specific procedure, new procedure for the referral of criminal cases to the Department of Justice that you have or are thinking about implementing.

[The information follows:]

ERISA

PWBP entered into a Memorandum of Understanding with the Department of Justice in 1975 allocating responsibility for investigating most title 18 and title 29 criminal matters to Justice. The Labor-Management Services Administration, however, is aware of its responsibility to refer criminal leads to Justice. In January and May of 1979, LMSA issued Notices governing referrals to Justice. The January Notice (No. 7–79) provides that PWBP will refer to Justice copies of any Summaries of Investigative Reports at the same time the case is referred to our Solicitor's Office. The May Notice (No. 39–79) establishes a formal procedure for deferring ERISA investigations at the request of other agencies. Under that system, LMSA contacts any agency who is or plans to be conducting a related investigation to try to coordinate the investigation. If no coordination can be achieved, LMSA will proceed with its investigation unless requested in writing not to do so.

Chapter 52 of the ERISA Compliance Manual instructs field investigators of specific procedures to follow when they discover criminal leads during investigations. In brief, investigators are to prepare interim Reports of Investigations (ROI) to be transmitted through the Area Administrator (AA) to PWBP's National Office of Enforcement. This office will then discuss the situation with the National Office of Justice, with a written memorandum to follow either to Justice the file, as appropriate.

Specifically, the procedures are as follows:

a) ERISA Civil Investigations.

When an ERISA civil investigation develops evidence sufficient to make a preliminary determination that matters being investigated may also constitute a violation of either Title 18 or section 411, 501, or 511 of ERISA, the investigation of criminal aspects only will be discontinued and an Interim ROI will be prepared. The Area Administrator (AA) will transmit the report through the Regional Administrator (RA) to the Office of Enforcement. In his/her memorandum, the AA will make recommendations as to whether the case should be developed first as civil or first as criminal, or both concurrently. In the case of Title 18 violations, the AA should state whether he/she desires to continue the criminal investigation and has the resources to do so, consistent with established PWBP program priorities.

The Office of Enforcement will review the relative merits of the civil and criminal aspects and will discuss the Title 18 and Act sections 411 and 511 issues with the Department of Justice. Following a decision between PWBP and Justice as to the approach to be followed, the Area Office and the Regional Office will be notified by memorandum.

(b) Labor-Management Standards Enforcement (LMSE).

When a LMSE investigation uncovers evidence of a criminal violation of Part I, Title I of ERISA, the details will be reduced to writing in a separate memorandum for the LMSE Investigator through his/her supervisors to the AA. LMSE will not investigate these possible violations until authorized by the AA. The AA will transmit the memorandum through the RA to the Office of Enforcement, with his/her recommendations as to whether the case should be developed first as civil or first as criminal, or both concurrently. The AA should also state whether he or she desires to continue the criminal investigation and has the resources to do so.

The Office of Enforcement will treat these situations the same as in civil/criminal determinations except that prior to discussion with the Justice Department, there will be coordination with the National Office, LMSE, particularly when there appears to be a close interrelationship with a Labor-Management Reporting and Disclosure Act investigation.

(c) Central States Teamsters Investigations.

In the context of the Central States Teamsters' funds investigations and litigation, the close coordination which exists between the Federal agencies involved has obviated the need for a formal referral system. Fairly regular meetings are scheduled in the Chicago region between personnel of the Department of Labor, the Department of Justice, and the Internal Revenue Service. Materials which might be relevant to ongoing grand jury proceedings or other criminal investigations are forwarded directly to the individuals who are able to put the information to the best use, and the transmittal of such information is recorded in an appropriate manner.

(d) Complaint-Generated Cases.

Where there is no pending fiduciary investigation involving a Plan and a complaint is received by the AO alleging violations of Title 18 or section 411 or 511 of ERISA, the complaint will be transmitted to the Office of Enforcement with a cover memorandum from the AA. This memorandum includes all relevant information known about the plan and the alleged subject(s) and a recommendation as to whether or not the AA desires to conduct the criminal investigation and has the resources to do so, consistent with established PWBP program priorities. The Office of Enforcement will notify the AO by memorandum of its decision and instruct the AO accordingly.

LMRDA

In the LMRDA program the Department of Justice in Washington is advised in writing of each potential criminal investigation assigned to LMSA by a United States Attorney and, upon completion, the results thereof. Copies of investigative reports are supplied to the U.S. Attorney automatically and to the Department of Justice upon request.

In the past year, LMSE has attempted to improve working relations with the Justice Department particularly at the U.S. Attorney level. LMSE field staff have been directed to deal directly with the U.S. Attorneys during the investigation and prosecution phases of embezzlement investigations. Development of closer, more effective relationships at the local level is a major LMSE objective which will improve criminal enforcement considerably. The procedures for forwarding completed investigative reports have recently been altered to allow for a more timely, responsive submission to the U.S. Attorney. In fiscal year 1982 we will also modify our criminal reporting, after further consultation with U.S. Attorneys, to ensure that LMSE criminal reports adhere to U.S. Attorney standards and prosecutive needs.

Senator NUNN. And also for the record the question does the Labor Department have an intelligence system to monitor labor racketeering and organized crime? If so, would you describe it? If not, would you please tell us if you plan to address that problem?

[The information follows:]

The Department has the ability to cross-reference certain information about plans from the annual financial report forms. For example, we can find all plans with over 20 or 30 percent real estate investments. We do not have at this time the capacity to cross-reference service providers, Thus, we cannot find all plans to which an individual provides services. However, we would like to improve the system to have that capacity, and we are taking steps toward determining if this is feasible.

In addition, the Department has an index file system which identifies specific and nonspecific or general intelligence information pertaining to persons and organizations. Information in the index file is prepared from investigative reports, Form 5500 desk audits, complaints, newspaper articles, legal proceedings, government agencies, internal memorandum, etc.

Senator NUNN. Mr. Secretary, before you have to go, I know Senator Rudman and Senator Roth have another question, so I will try to wrap mine up and I hope you will be able to let your associates remain.

Secretary DONOVAN. Yes.

Senator NUNN. In trying to determine just how effective the Department of Labor has been in the investigation of corruption of the International Longshoreman's Association, we requested the Labor Department to furnish us the cases they have initiated with respect to ILA. This was done in response to severe criticism in our waterfront corruption hearings wherein witness after witness claims that the Department of Labor had ignored evidence of massive corruption.

The Office of the Inspector General replied that they had only three open investigations concerning the ILA. LMSA replied and listed numerous open investigations of the ILA. However, as we read the letter from LMSA, it is rather apparent that LMSA is including in its statistics many of the UNIRAC cases which were investigated by the FBI.

Without regard to these UNIRAC cases, it appears LMSA has listed 19 open investigations on the ILA so my question, with that background, Mr. Secretary, what is the Department of Labor doing to make sure its presence on the waterfront is known and felt in the area of monitoring labor and management corruption?

Secretary DONOVAN. That covers two parts of the Department, as you stated, LMSE and the IG. I would ask Mr. McBride to comment on what the IG's Office presence is and then we can turn to Mr. Dotson.

Senator NUNN. Let me do this at this point. If these witnesses are going to remain here, I will reserve that question and the other question. The other question I wanted to ask you, to make sure you understand the importance of it, is the Longshoremen and Harbor Workers Act, the Compensation Act, but I will reserve that one, too. I just wanted to ask you one final question here. I would assume that most of this has to be answered by the Internal Revenue Service, but who is responsible in the Government, whether it is the Department of Labor, Justice, IRS, who is responsible to test or to monitor the actuarial soundness of the Teamsters Central States pension fund?

Secretary DONOVAN. When these papers are filed by a plan, as, I understand it, IRS and we go over it together. It is not clear to me, frankly, that IRS determines that the plan is actuarially sound. I believe that falls more into the Labor Department's responsibility But I am not certain of that.

Senator NUNN. That is an area that we have always gotten vague answers from everybody. IRS is vague.

Secretary DONOVAN. Let's see if we can get it firm. Can we?

Senator NUNN. Let me just recite the reason for my concern was while you are discussing—and I want to ask GAO—I didn't get to ask them questions. I want to get the GAO people to come back before we conclude the hearing and ask them a couple of questions on this. But it is my understanding that the Western States Pension Fund has assets of about $2.8 billion, and unfunded liabilities of about $2.8 billion.

It is my understanding that this fund is somewhat equal in size, comparable in size to the Central States. My understanding further is that the Central States Fund has assets of $2.8 billion and unfunded liabilities of $7.6 billion, which is a ratio of assets to unfunded liability of approximately one-third of those of a similar fund in the Western States. That seems to me to be prima facie evidence of potentially very serious problems. So that the question comes up, not an analysis of this problem, now, but who in the U.S. Government is looking into this, and whose responsibility is it under the law?

Secretary DONOVAN. I am advised statutorily it is the IRS but I do believe we have certain responsibilities. Maybe Mr. Ryan can address those responsibilities. It is a potential problem.

Mr. RYAN. Senator Nunn, I know that the Commissioner of IRS and Mr. Windborn, Assistant to the Commissioner for Employee Benefit Plans will be willing to address this, but statutorily the minimum funding standards of ERISA are in IRS' bailiwick.

I think the question would be best addressed to them, but obviously as the Secretary said, we do have some responsibilities in this area.

Senator NUNN. Thank you.

Thank you, Mr. Secretary.

Secretary DONOVAN. Thank you, Senator Nunn.

Chairman ROTH. Senator Rudman?

Senator RUDMAN. I know you have to leave, Mr. Secretary. Let me just ask you briefly. It is obvious from the questions of Senator Nunn to the Solicitor that there still tends to be, I think, a small amount of fuzziness about the amount of support we might get in terms of jurisdictional questions. Would it be your policy—I will put this to you very directly—that if it becomes apparent to you or your Solicitor that you have a jurisdictional problem, a problem with a statute to enforce the laws of this country against corruption of the type we are talking about, that you would support that kind of corrective legislation that it would take to give you that jurisdiction?

Secretary DONOVAN. Yes.

Senator RUDMAN. Finally, let me just ask as an aside, as you have to leave, how much are you being sued for in this action? What is the amount in this lawsuit—how many million ?

Secretary DONOVAN. I think my people have been very kind to me and have not laid that one on me yet. [Laughter.]

Senator RUDMAN. Let me just tell you, if it will make you feel better, during my last year as Attorney General in New Hampshire, I was sued for $20 million in a civil rights action because I refused to approve a racing license for a person with questionable background. All it did for me, Mr. Secretary, was enhance my credit rating. I hope it will do the same for you. [Laughter.]

Secretary DONOVAN. I could use it.

Senator NUNN. Were your assets sufficient to cover any potential liabilities? [Laughter.]

Chairman ROTH. Mr. Secretary, I would like to make one observation on what Senator Rudman said. The one thing we do not want to hear at any time in the future is that an investigation or action could not be taken because it fell between the cracks of jurisdiction of the Department of Labor, the Attorney General, whoever it may be. If there are any such problems, I ask you to take the initiative and make certain that you come up here and we will try to correct that.

The final question I have is, of course, we have been concentrating on the Central States Fund, but do we have in place now adequate systems to insure that we will be able to, the Government will be able to detect any other abuses? Are our auditing procedures adequate in that area? Are we in a posture where you feel that you are able, through the system and the personnel you now have available, to insure that there is adequate review of these trust funds and the performance of the trustees?

Secretary DONOVAN. As you are aware, Mr. Chairman, there are millions of plans. Obviously, any investigator or any auditor worth his salt would like more personnel, would like more technological equipment, and we are no different. I would say this to you: That we feel our targeting methods are going well. I will feel more comfortable than I do right now if that can be improved. There is a sense of discomfort with the immensity of the obligation, and the resources that we have, particularly relating to the smaller plans. We hope to rectify that, but I cannot give you a sense of security that we are adequately reviewing these smaller plans. I am sure there is much room for improvement in that area.

Chairman ROTH. Are there any other cases or potential cases for abuse of the dimension we are dealing with here?

Secretary DONOVAN. I would like to believe there are not, but being of the real world, I would say yes, potential is there.

Chairman ROTH. You have discovered—I am not asking whether they exist, but are you aware of any?

Secretary DONOVAN. Of these proportions?

Chairman ROTH. Yes.

Secretary DONOVAN. I am not.

Chairman ROTH. Thank you very much, Mr. Secretary. We appreciate your being here.

Secretary DONOVAN. Thank you, Mr. Chairman. I am really sorry to leave. I realize the importance of this hearing. In parting, I just want to assure you that the personnel that I praised earlier I want to praise once again in leaving. They are outstanding Americans and they have integrity and competence and with the resources that we have, when we appear before you again, we will be showing you results, I am sure.

Senator Nunn. Mr. Secretary, thank you very much for appearing. I found your statement and your general attitude very encouraging. We look forward to continuing to work with you.

Secretary Donovan. Thank you, Senator Nunn. Thank you, Senator Rudman.

Senator Rudman. Thank you, Mr. Secretary.

Chairman Roth. Thank you, Mr. Secretary.

I would like to ask the Assistant Secretary, Mr. Dotson, or Mr. McBride, how do Labor, IRS, and Justice develop and coordinate the targeting of corrupt practices in the pension plan? Is there any sharing of labor-racketeering intelligence among Labor, IRS, and the FBI?

Mr. McBride. I would suggest that Mr. Dotson answer that. He has basic responsibility for ERISA oversight.

Mr. Dotson. The procedure that is now——

Chairman Roth. Would you speak into the microphone?

Mr. Dotson. What is now being followed is that when any evidence of criminal wrongdoing is found, it is immediately passed on to the Justice Department. That procedure was covered in the Secretary's statement. There is no delay.

Chairman Roth. What about developing a strategy or targeting where you are going to look for——

Mr. Dotson. The compliance audit program in LMSE is assigned to do just that, it is a targeting program. It is a refined type of auditing and is designed to target. We have essentially two situations, isolated cases, those which are carried through by labor-management standards enforcement and then those that have been targeted by the strike force, in which case that information will go directly over to the strike force for further use or guidance. As has been noted already, there has been confusion in the past about the role of the pension and welfare benefits program and criminal activities. This is something that we are assessing to see what that relationship ought to be, all with a view toward expediting the handling of criminal evidence and criminal cases in that area.

Chairman Roth. Are you doing that together with the Department of Justice?

Mr. Dotson. We have not yet had meetings on the subject. We have determined to establish a committee involving Justice on the consideration of some of these problems. That decision has been made. It has not yet started.

[At this point Senator Rudman left the hearing room.]

Senator Nunn. Going back to the question we were asking about the waterfront a little while ago, I ask you what plans do you have in the Department of Labor for the waterfront? I won't recite the lack of Labor Department involvement. We have already done that, I think.

[At this point Senator Roth left the hearing room.]

[The letter of authority follows:]

U.S. Senate,
Committee on Governmental Affairs,
Senate Permanent Subcommittee on Investigations,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on Labor Racketeering and Management Corruption, on Wednesday, October 28; Thursday, October 29; Monday, November 2; and Tuesday, November 3, 1981.

WILLIAM V. ROTH, Jr.,
Chairman.

SAM NUNN,
Ranking Minority Member.

Mr. McBRIDE. Speaking with regard to the relative handful of special agents who investigate organized crime, the Longshore Workers is one of the targeted unions which receive great attention from our investigative staff, and from the strike forces. Our basic case priorities and investigative priorities are set as much by the strike force as by me We have four international unions—the International Longshore Workers is one—which are the primary targets for continuing investigation. I should note, in the last 6 months overall we had 64 individuals indicted and I assure you that that is an honest count.

Senator NUNN. About 64 individuals?

Mr. McBRIDE. As a result of our organized crime investigative activity. That is Longshore, Teamster, and other unions.

Senator NUNN. During what period of time?

Mr. McBRIDE. The last 6 months.

Senator NUNN. What about the workmen's compensation racket that was documented in our hearings last fall, has the Labor Department gotten involved in that?

Mr. McBRIDE. I have recently gotten involved. We also have, as you know, the Longshore Harbor Workers' Act, which authorizes disability payments cut of employer insurance funds. As a result of some of the disclosures of this subcommittee and criminal prosecution in New York, there have been really two aspects. One, an employee of the Department was charged with accepting bribes or gratuities, an employee in the New York Office of Workers Compensation, and we are presently—I have a senior investigator in New York doing an investigative survey of practices in this area to see if there are any particular strategies which can result in more criminal prosecutions either for fraudulent claims or against claims representatives or involving medical providers or naturally involving the employees of the Department.

Senator NUNN. Turning to another area, the evidence elicited in our 1980 hearings was that the Department of Labor terminated any effective third party investigation at a very early date, thus not permitting the Department of Labor investigators to properly investigate civil or criminal charges.

Every single expert in the field has insisted that a thorough third party inquiry is essential to the success of any complex financial investigation. Yet, in accordance with advice from the Solicitor's office, any effective third party investigation in the Teamsters case were virtually shut off before they ever started.

I assume this question would be directed to the Solicitor and also to the Assistant Secretary, either or both of you.

What is your position now with respect to instructing members of your Department to perform an adequate third party investigation?

Mr. RYAN. From the Solicitor's office stand——

Senator NUNN. I have to take a break. One moment for a phone call.

[Brief recess.]

[Members present at time of recess: Senator Nunn.]

[At this point Senator Rudman entered the hearing room.]

Senator RUDMAN [presiding]. The subcommittee will now be in order. We will continue with questions from Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

I was asking about third-party investigations, I believe. I am not going to go into the whole litany of criticisms. You read our report. We felt this was one of the areas where the Labor Department made the most grievous errors and we would like your policy now in future investigations plus anything you want to say about this one—the statute hasn't run. Maybe we haven't indicated that—what your policy is regarding third party investigations in cases of this nature in the future.

Mr. DOTSON. From the standpoint of investigation in the pension area, it is our policy to investigate third parties. It makes every kind of sense to me if you are looking for assets, you look to see where they have gone to get them back. Once suits have been filed, we are guided by the direction of the Solicitor on further pursuit of third parties.

Senator NUNN. The policyman has stated you are going to be making these decisions. I guess what he is saying is this is not in the nature of policy, but in the nature of legal determination, so that gets right to you.

Mr. RYAN. Senator, I think the shift that has taken place, and I think it is a shift, is that the Assistant Secretary will be investigating every instance of third party type activity in ERISA where it makes good sense to do so. The problems that existed in the past, as I understand them, and I was not at the Labor Department, were because of interdepartmental type rivalries that when a piece of litigation was forwarded to the Solicitor's office, there was little or no communication with the investigatory staff to assure that the investigatory stage had been completed and that it was at a point where we should move into discovery.

I can assure you that in the future that will not take place. I deal frequently with the investigatory staff where the issues involve corruption and racketeering. As Mr. Dotson has said, we will not move to the second question without addressing the first question, and that is where are the assets.

Senator NUNN. I was going to go through a whole litany of General Accounting Office recommendations but in the interest of moving the proceeding along, what I would like for you to do is submit for the record your official reply to GAO recommendations. And that is as far as the future is concerned. I am not asking you to go back and answer everything they said about the past. The question is, they have made certain recommendations and we would like your official reply to those.

Mr. Secretary, how much has the Teamsters Central States investigation and the litigation cost the U.S. Government to date?

Mr. DOTSON. We have not been able to put a figure on that.

Senator NUNN. Could you give us your best estimate on that?

Mr. DOTSON. I cannot.

Senator NUNN. $100 million, $200 million, $1 million, $5 million?

Mr. DOTSON. At this point, I would not know where to start.

Senator NUNN. I am not going to ask you to do a tremendous amount of work on it, but the GAO has estimated, I believe, about $8½ million. I would like your reaction to that estimate for the record.

Senator RUDMAN. Would you yield for one moment?

Senator NUNN. Certainly.

Senator RUDMAN. I agree that is a very important question from this witness. If he is unable to supply accurate and complete testimony to that question here this morning, I think it is important we get that as part of the record and an answer generally today if they can, but we can get it fulfilled and amplified in a record answer.

Senator NUNN. Do you have any reason to disagree at this point with the GAO's estimate?

Mr. DOTSON. I have no basis on which to give an opinion.

Senator NUNN. Would you furnish that for the record?

Mr. DOTSON. Yes, sir.

[The information follows:]

Our best estimate is that the Teamsters' Central States pension and welfare funds investigations have cost the Department between $4.5 and $5 million through fiscal year 1981.

Senator NUNN. The question of competent leadership and the constant turnover in the Teamster Central States Investigation and Litigation Group in the Department of Labor, of course, has been well documented.

During the investigation, since we have been involved in oversight, the investigation has been run by—the litigation has been run by Mr. Lippe, Mr. Perkins, Ms. Gallagher, Mr. Gallagher, Mr. Stewart, Mr. Benages, and now Mr. Feldman. That is the seven different people.

Mr. Solicitor, you are an attorney. Do you believe you can successfully pursue complex, complicated litigation with this kind of a turnover?

Mr. RYAN. Senator, the simple answer, no. Just to correct the record in one sense, some of the individuals that you named were on the investigatory side and some were on the litigation side. I think it is only four on the litigation side, but that is three too many as far as I am concerned.

Senator NUNN. When Mr. Perkins was there, we got testimony from him he really wasn't running the investigation. That is why I threw in the other people. The testimony was these people in the Solicitor's office were really running the investigation. But nevertheless I guess what we are getting at, are you going to try to have more continuity in this position in the future?

Mr. RYAN. Yes, Senator, we are. To handle some very complex litigation, we now have a very able lawyer in David Feldman, who was head of litigation for the State of Maryland.

We have two senior litigators from the Securities and Exchange Commission, one handling the pension case, the other handling the health and welfare case. I believe that team will handle this case in a very professional manner.

I really, as you well know, cannot address the issue of turnover. We are doing everything we can to keep the people who are handling these cases happy, pleased, and professionally fulfilled.

Senator NUNN. Has the Department of Labor recovered any money from the pension fund or—let me reword that.

Has the Department of Labor recovered any money for the pension fund on behalf of the people who depend on that fund from any source since since 1975?

Mr. RYAN. I would only know vis-a-vis the litigation that we are involved with concerning the Central States Pension Fund.

The answer to that is that we have not. There may be other subsidiary cases where we entered into consent decrees on a local level. I just don't have any knowledge of that.

Senator NUNN. I have several questions on the benefits and administration account that I would like to submit for the record.

If you can answer those and I have other questions for the record.

We heard there is a substantial difference in handling of labor cases in the Justice Department and Solicitor's office. We have been told when a potential criminal matter is referred to, the Solicitor's office, the matter may be there months and years and may never ultimately be handled.

On the other hand, we are told criminal matters referred to the Justice Department either through the U.S. attorneys or the strike force, when this happens, they receive prompt attention and are disposed of one way or the other.

Have you looked into the delay in handling cases in the Solicitor's office?

Mr. RYAN. The answer is, yes, Senator. We have. The two programs, Assistant Secretary Dotson handles one in the ERISA area and the other in the LMSA area are handled entirely differently.

In the ERISA area, the Solicitor's office is not involved at all in referrals of any criminal activity. I will let him address that aspect of it. In the LMRDA area, that has been a problem. Assistant Secretary Dotson and I have talked about it. We believe that right now we have a system set up which will move the cases very quickly, in fact, within 5 days, through the regional solicitor's offices.

I have told him also if that system does not work or if he is not pleased with that system, then we will change that also so that it conforms in a large extent to the ERISA program.

Senator NUNN. Have you done any kind of survey to determine what the investigations have been delayed by the Solicitor's office?

Do you have any kind of a report on that?

Mr. RYAN. I guess I do, Senator. In the LMRDA area, I have no evidence that any cases have been delayed. In the ERISA area, I think that there has been an inordinate amount of delay. Assistant Secretary Dotson and I have talked about it. It has been a problem that has gone on for, I think, too many years, and it goes to the specific question of where we will use our resources.

We have decided to institute on a pilot basis the decentralization of ERISA litigation into one of our regions. We have not selected that region yet, but rather than limit the number of lawyers we are now working on ERISA cases, which is something less than 50, we would like to use the talents of the 250-plus lawyers we have in the field so that we can do Mr. Dotson's work.

So the answer is that as far as I am concerned, we have not done it to a point where we should feel good about it. We are going to change that.

Senator NUNN. What is the purpose of having the Solicitor's office personnel review a criminal matter before it is referred to the Justice Department?

What is the reason for that?

Mr. RYAN. In the ERISA program, we are not involved at all. In the LMRDA area, we have specific investigatory authority for both civil and criminal activity under the States. When an individual who works for Assistant Secretary Dotson goes forward with a criminal referral, it is our opinion that he goes forward on behalf of the Secretary and the Secretary has decided that at this juncture we should move those cases forward promptly and efficiently and that the Solicitor's office should be involved.

If, however, delays continue, we are going to look at that and probably change that program.

Senator NUNN. The General Accounting Office reports and our previous investigation reveals that neither the Labor Department nor the Internal Revenue Service reviewed the new trustees' qualifications, experience or associations with the former trustees. The Labor Department did not even know how the new trustees were selected.

How can the fund be reformed if the new trustees are handpicked by the predecessors and have the same qualifications or lack thereof as their predecessor?

Mr. RYAN. Senator Nunn, as you are aware, in our proposed consent decree we went exactly to that issue. Quite frankly, that is the reason why our discussions broke down. We felt that a system should be established for the selection of not only all trustees but also the selection of unaffiliated independent trustees. We would be glad to provide the subcommittee with a copy of our draft consent agreement.

Senator NUNN. We will get at that in some executive session in the future, I imagine. We have a whole background in this so-called Kotch-Crino report. We know you are familiar with it. You read about the incredible situation about where we couldn't even get it for months under subpena authority. They finally found a copy and it was deemed so sensitive that one of the high officials in the Labor Department instructed lower personnel to get rid of it and then lo and behold, we found it was simply thrown in the trashcan without being shredded or anything else.

At least that was the testimony. So it is an incredible story.

Do you have any procedure that has changed or has been entered into by the Department of Labor to assure reports that are made in the Department of Labor are handled in accordance with the laws and regulations of the Government?

You don't have a shredding machine for reports?

Mr. RYAN. Senator, there is no way to defend the actions of any individual with regard to the Kotch-Crino report. I can assure you that any report that we in the new administration prepare will be secured and that nothing will be destroyed.

Mr. DOTSON. I can add something to that. The Secretary has made it very clear to all of us as a result of that incident, one, what our purpose is and what his policy is, and two, that we are to be critical of each other in a positive way within the Department. And I think the significant aspect of it is we have different people and we are all of a single mind of what we ought to be doing.

Senator NUNN. The General Accounting Office testified in 1977 that the Department of Labor had failed to set up a system which gathered, organized, and provided adequate retrieval to enable the Department to identify abuses even in cases where the financial abuses were readily identifiable. This situation, it seems to me, is a critical situation and must be addressed. Prompt and adequate detection of abuses is the only way to safeguard the rank and file union members' moneys. The General Accounting Office stated in 1977 that the Labor Department did not even have the ability to evaluate properly the annual financial reports submitted to the Department by unions and trust funds so that it could protect the rank and file members against abuses.

What has been done in response to this criticism, or what plans do you have, Mr. Secretary?

Mr. DOTSON. The answer to that is another long one. I wonder if we might submit that in writing.

Senator NUNN. Let me ask if you can summarize it or just tell us in general what you are doing and submit the details for the record.

You are aware of the problem?

Mr. DOTSON. We are aware of the problem. We are looking at better targeting based on the program that has already been put into effect in the labor management standards enforcement program. We have developed specialized targeting for different areas of the country because of the different patterns of industries and ways of doing business that are involved.

We have assessed the capabilities of our individuals and our training programs. I am reluctant to go into a lot of detail on some of the specifics, because I think it could hurt us in some ways.

Senator NUNN. Would you submit that for the record and indicate which portions need to be sealed?

Mr. DOTSON. Yes, sir, we will.

Senator NUNN. You will work with our staff in doing that. The ultimate question is, for instance, if you were given a profile of a financial abuse that had been utilized over and over again to misappropriate union and trust fund moneys, could you use any current records management system to identify similar patterns of abuse in other trust finds and union funds?

Mr. DOTSON. I am not certain how far along that approach is in being developed, but that is an approach we are looking at.

One thing I failed to mention, of course, is computers.

We are learning different ways to use computers.

Senator NUNN. Investigators assigned to organized crime and racketeering investigations within the Office of Inspector General are not law enforcement officers, as we understand the legal definition of the term.

Is that your understanding?

Mr. MCBRIDE. That is correct, they do not have the basic authorities of arrest, execution of warrants, payments of informants, and——

Senator NUNN. Does this create problems?

Mr. MCBRIDE. In my view it does. I have discussed this with the Secretary and I think he intends to seek advice both from within the Department and from the Department of Justice strike force people before he takes a position on this issue.

I feel the lack of authority poses significant obstacles to effective investigation.

Senator NUNN. So you have underway discussions that could possibly lead to administration recommendations or legislation in this area?

Mr. **McBride**. That is correct.

Senator **Nunn**. Thank you, Mr. Chairman.

I have other questions I would like to submit for the record. But in the interest of time, we have an important debate on the floor in a few minutes and I know you would like to do that also——

Senator **Rudman**. I didn't realize we had something important on the floor today.

Senator **Nunn**. Frankly, I don't think debate is going to have much bearing on the final outcome.

Senator **Rudman**. Thank you, very much, Senator Nunn.

We thank you.

I have no further questions at this time. There may be some for the record. We appreciate you being here this morning.

We will now call back the GAO witnesses. We appreciate them being here again because Senator Nunn was not able to ask certain question.

If you would now come back up to the witness table, please.

Senator Nunn?

Senator **Nunn**. Thank you, Mr. Chairman.

I assume all the witnesses have already been sworn, is that correct? You understand you are still under oath.

With regard to the independence of the asset managers, we are talking now about the Teamsters State fund and I am also making reference to the draft agreement that is pending before the Labor Department. You are familiar with that, aren't you?

Mr. **Ahart**. I think our people have seen a draft agreement. I am not sure they have seen the most current proposals, Senator.

Senator **Nunn**. I ask a few questions with regard to your understanding of that agreement, as you know it. We have been supplied with a new proposal for the fund's continuing relationship with asset managers. We will be hearing testimony on this from the representative of the Teamsters Union tomorrow. As we understand it, under the new proposal No. 1, the asset managers will be required to invest all proceeds from real estate investment plus 25 percent of all new funds in real estate. Under the 1977 agreement, no investments were to be made in real estate, Is that your understanding?

Mr. **Ahart**. I am not sure we have seen that particular proposal, Senator. Let me ask Mr. Kowalski if he has seen it and to comment.

Mr. **Kowalski**. I have not actually seen the proposal but I have been told these are the proposed terms.

Senator **Nunn**. You have seen the 1977 agreement?

Mr. **Kowalski**. Yes

Senator **Nunn**. Under the 1977 agreement no investments were to be made——

Mr. **Kowalski**. Yes, sir.

Senator **Nunn**. What was your understanding of the reason behind that 1977 requirement?

Mr. **Kowalski**. Because most of the investments in the past were in the real estate area. When Equitable took over, it was a 65-30 ratio real estate to the securities. Most of the abuses were in the real estate loans.

Senator **Nunn**. The reason for that is because most of the abuses has been in the real estate area?

Mr. **Kowalski**. Yes, sir, that is correct.

Senator NUNN. Would you think this is a matter of concern if you saw a pronounced shift in the agreement back to the real estate area?

Mr. KOWALSKI. Yes, sir, I would.

Senator NUNN. Why?

Mr. KOWALSKI. It could possibly lead to the same abuses the former trustees were charged with.

Senator NUNN. It is also our understanding that the money earmarked for securities investment can be transferred at will into real estate investments?

Mr. KOWALSKI. That is our understanding.

Senator NUNN. That is your understanding of the new draft also. Would this give you some concern?

Mr. KOWALSKI. Some concern.

Senator NUNN. Why?

Mr. KOWALSKI. It would put more funds in the real estate area and, again, that was the area where funds were mismanaged previously.

Senator NUNN. It is also our understanding that under the proposed draft agreement the trustee will assume a substantial voice in investment policy. Is that your understanding?

Mr. KOWALSKI. That is true, sir.

Senator NUNN. Does that give you any concern?

Mr. KOWALSKI. Yes, because it completely reverses the prior agreement where Equitable called all the shots on the investments. This way, the fund trustees will be able to influence Equitable's decisions.

Senator NUNN. That will also give you concern?

Mr. KOWALSKI. Yes, sir.

Senator NUNN. The other provision that we understand is in this draft agreement is a provision that the trustees can terminate with or without cause, and terminate with or without the consent of the Department of Labor.

Mr. KOWALSKI. Yes. That would give me the most concern in view of the attempts by the trustees to compromise Equitable to try to get rid of Palmieri, and set up its own staff to run the investments. That one would give me the most concern.

Senator NUNN. That would give you the most concern, No. 1?

Mr. KOWALSKI. Right.

Senator NUNN. Another provision, the trustees will pay Equitable a smaller percentage fee for securities assets it manages then for real estate-related assets it manages. Would you like to make a comment on that?

Mr. KOWALSKI. Again, that would emphasize to Equitable to put more money in real estate rather than securities.

Senator NUNN. What we have here is a proposed draft agreement that substantially undoes most of the restrictions of the previous agreement.

Mr. KOWALSKI. I would agree.

Senator NUNN. Any other comments you want to make on this?

Mr. KOWALSKI. No, sir.

Senator NUNN. Any other point of concern, significant concern or we covered most of them?

Mr. AHART. I would add this, Senator. As you went through the specific provisions, I think taking them together in their totality rather than individually, paints a picture of putting the investment managers pretty much under the control on a day-to-day basis of whatever the trustees would want them to do and provide some incentives, particularly through the fee arrangement, to go heavily into the real estate side.

Senator NUNN. That is certainly the way we see it. We will be interested in hearing from the Central States representative tomor row on those points.

Have you made any comparison of the actuarial or financial soundness of the Central States Pension Fund to any other fund?

Mr. AHART. I think there is a very limited amount. I will ask the actuary to comment on it. Most of the information is sketchy that we do have available and it is from public reports. I am not sure we could do a very good job of comparison. Let me ask Mr. Dana if he can comment on the thrust of your question.

Senator NUNN. Mr. Dana.

Mr. DANA. One comparison that might be made would be with the Western States Teamsters plan. On the basis of the 1979 valuation by McGinn, the Central States unfunded liability was more than $7 billion, as stated, and the assets were some $2.7 billion. Now, the comparable figures for the Western Teamsters plan, the unfunded was—I am sorry, I had the assets wrong on the other one. The assets were a little over $2 billion.

Senator NUNN. Let's back up. Central States Fund, how much were the assets?

Mr. DANA. Central States assets, $2.7 billion.

Senator NUNN. How about the Western fund, what are their assets?

Mr. DANA. $2 billion.

Senator NUNN. The unfunded for Western States, $3.1 billion, based on valuation of January of 1977. The unfunded for Central States based on the evaluation was in excess of $7 billion.

So the unfunded in the Central States Fund was about a little over twice what it was in the Western fund?

Mr. DANA. Yes, that's right.

The present funding policies under the Central States Fund, according to the actuary would require 39$\frac{7}{10}$ years to complete funding the unfunded actuarial liability, to amortize it completely. For the Western Teamsters, on the contrary, that number of years would be 29$\frac{6}{10}$ years, a considerably shorter time. This is an indication that at present, the funding on Western States is stronger, considerably stronger than on the Teamsters plan, the Central States. I would like to say, though, this is the situation as of the last valuation in both cases and while it indicates that past funding has been relatively stronger, from the point of view of actuarial soundness what happens in the future is very important.

If the Central States, for example, can maintain the contributions necessary to meet the minimum requirements each year, then we can say that the plan is, legally, financially sound.

For the other one, because more money has gone in already relative to their future obligations, relatively less has to be put in for the past service, portion of these future obligations. Their future contributions can go for current benefits.

Senator NUNN. Doesn't that mean the employers and the workers in the Central States funds are going to have to make substantially larger contributions in the future than their counterparts in the Western fund?

Mr. DANA. I am not—though I could supply it—I am not sure what the amount of the contribution is in the Western Teamsters fund at the present time. What it might mean is that the Central States have less margin, they are more vulnerable to vicissitudes, to unexpected events in the future or to just the potential future experience differences.

Although both of them, if they run into trouble, might have to increase their annual contributions to maintain their status under ERISA, certainly the indications from this would be the Western States could be in a better condition to withstand adversity.

Senator NUNN. Let me back up again and make sure we got these figures correct, because the earlier figures I used are not quite the same as you use. Give me again the date of this report first.

Mr. DANA. The date of the report on Central States was March 3, 1980.

Senator NUNN. What was the date of the report on Western States?

Mr. DANA. On Western States, the figures from are form 5500 for the year 1979 and the valuation was as of January 1977.

Senator NUNN. Give me again the assets——

Mr. AHART. Excuse me, Senator. I think those two dates are not comparable. The date, as I understand it, Mr. Dana, the valuation date of the Central States actuary's report was in 1979.

Mr. DANA. 1979, yes.

Mr. AHART. The valuation date of Western was January 1977. I think the valuation date for Central States was January 1979 even though the report was issued in March of 1980. Those will be the two dates, January 1979 for Central States, January 1977 for Western.

Senator NUNN. This is the closest comparison we have got. You are saying they are not completely analogous?

Mr. AHART. That is correct. To make comparable dates, 1979 in Central versus 1977 in Western.

Senator NUNN. Give me the assets in Central.

Mr. DANA. The assets in Central, the net assets available for benefits is $2 billion.

Senator NUNN. $2 billion?

Mr. DANA. Yes.

Senator NUNN. For Western what were the assets?

Mr. DANA. For Western, the assets $2.7 billion.

Senator NUNN. What were the unfunded liabilities for Central?

Mr. DANA. Unfunded liabilities for Central, $7.6 billion.

Senator NUNN. What are the unfunded liabilities for the Western?

Mr. DANA. Unfunded liabilities on the Western were $3.1 billion.

Senator NUNN. We are pretty close then with the figures we have. What you have got, then, you have Central with $2 billion in assets, Western with $2.7 billion, Central with $7.6 billion in liabilities, unfunded liabilities, Western with $3.1. Central had less assets and more than twice as much unfunded liabilities then Western.

Mr. DANA. That is right. Where this would be particularly bad would be if the plans were to be terminated, At the present time, it doesn't seem very likely either one of them would be; at least that is my opinion.

Senator **Nunn**. Are these funds approximately the same sizes in terms of the number of members, so forth?

Mr. **Kowalski**. They are, approximately. Central has 511,000 and Western has about 523,000.

Senator **Nunn**. What is the main distinction in the way these two funds are run?

Mr. **Kowalski**. We have never reviewed Western's. Although we haven't reviewed Western's, we do know that Western had an independent investment manager for a long time.

Senator **Nunn**. Has an independent investment manager?

Mr. **Kowalski**. It has.

Senator **Nunn**. Separate from the trustees?

Mr. **Kowalski**. I assume it is. I don't know the details.

Senator **Nunn**. Were these actuarial reports—these weren't done by the General Accounting Office?

Mr. **Dana**. No, sir.

Senator **Nunn**. These are reports you had access to but they were actuaries doing this for the fund; is that right?

Mr. **Dana**. That's right.

Senator **Nunn**. I will ask you a few more questions for the record on this. In the interest of time, I won't go any further at this point.

Thank you all for being here. We appreciate your long and diligent effort in this area. You have been of immense help to the subcommittee, each of you.

Senator **Rudman**. Thank you very much. The subcommittee will call Mr. Ray Maria.

The hearing room will be in order. Mr. Maria, do you swear the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. **Maria**. I do.

TESTIMONY OF RAYMOND MARIA, INVESTIGATOR, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Senator **Rudman**. State your name, address, and occupation for the record.

Mr. **Maria**. Raymond Maria. I am a member of the Federal Bureau of Investigation, and I am temporarily assigned to the Senate Subcommittee on Investigations.

Senator **Rudman**. I understand you have a statement?

Mr. **Maria**. Yes; I do.

Senator **Rudman**. Please proceed.

Mr. **Maria**. Senator, I have two brief statements. The first will be in reference to Mr. Anthony Scotto. The second will be in reference to Anthony Salerno.

Anthony M. Scotto, born May 10, 1934, currently is an inmate at the Federal Correctional Institution, Danbury, Conn.

In public hearings before the U.S. Senate Judiciary Subcommittee on Criminal Laws and Procedures in August 1969, Scotto was identified as a captain or "capo" in the Carlo Gambino family of La Cosa Nostra. Federal, State, and local law enforcement agencies, moreover, describe Scotto as a member of the Gambino family as early as 1963.

In 1970, Scotto exercised his fifth amendment privilege before the New York Senate Joint Legislative Committee on Crime in response to questions about his membership in the Gambino family.

Scotto became a power on the Brooklyn waterfront through his marriage to Marian Anastasia, daughter of the deceased Anthony "Tough Tony" Anastasia, the former boss of ILA Local 1814, Brooklyn, N.Y. Tough Tony's brother, Albert Anastasia, formerly was a boss of his own organized crime family and ran Murder, Inc. In 1963, Vito Genovese and Carlo Gambino successfully plotted the murder of Albert Anastasia, allowing Gambino to become the boss of Anastasia's family.

Following the murder, Michael Clemente of the Genovese family interceded with Gambino to promote Scotto into the Gambino family and insure that he inherited the important ILA positions held by his father-in-law.

In an FBI tape-recorded conversation in 1978, Clemente related how Scotto personally pleaded for Clemente's assistance in obtaining a position and recognition within the Gambino family. Clemente then described his power and influence over Scotto in that Clemente was able to tell Scotto what he wanted done.

In another conversation recorded by the FBI in 1978, Scotto acknowledged Clemente's superiority over him and Clemente's ability to demand that Scotto meet him at a restaurant to discuss Scotto's and Anthony "Fat Tony" Salerno's access to a confidential court document concerning a Federal wiretap.

In November 1979, while serving as the ILA international general organizer, international legislative director, and president of local 1814, Brooklyn, the largest ILA local, Scotto was convicted of waterfront racketeering, demanding and accepting payments from management, and Federal tax fraud. He was sentenced to 5 years confinement and fined $75,000.

Scotto remained free of bond while appealing his conviction. Under current Federal law Scotto could not be removed from union office while his appeals were pending. The Waterfront Commission of New York Harbor, however, was empowered to remove him from office immediately upon conviction in trial court.

Scotto thus was removed as president of local 1814. In his place the union's executive council appointed Frank Lonardo as acting president. Lonardo is Scotto's cousin by marriage. Lonardo eventually was elected as president of local 1814.

Scotto was subpened to testify before this subcommittee on February 27, 1981, while still free on bond pending the appeal of his conviction. Scotto did not appear on that date. His attorney testified under oath to this subcommittee that Scotto had been admitted to Long Island College Hospital on February 26, suffering pain from an affliction described as sludge in the gallbladder.

On such short notice subcommittee staff was unable to make arrangements to have Scotto examined by a Government physician to determine if he was able to appear for testimony. On February 27, Scotto's attorney agreed to cooperate in having Scotto examined by a physician designated by this subcommittee.

In the interim period, Scotto's conviction was affirmed by the appeals courts, and he began serving his confinement at the Federal Correctional Institution, Danbury, Conn., on July 23, 1981.

Senator, I will now proceed with comments regarding Anthony Salerno.

Staff investigation has revealed that Anthony Salerno, also known as "Fat Tony," has been identified as a member of the Genovese organized crime family. This initial identification was made in 1963 hearings before this subcommittee. Since then confidential, reliable informants of Federal law enforcement agencies have stated that Salerno is an underboss in the Genovese family who oversees that family's New York and Miami waterfront racketeering as well as its gambling and loansharking activities.

With respect to waterfront activities, Salerno is superior to Genovese family member and Miami International Longshoremen's Association officer Douglas Rago. Rago's extensive role in International Longshoremen's Association shakedown and waterfront racketeering was detailed in this subcommittee's February hearings.

Because of these connections to waterfront corruption and organized crime, Mr. Salerno was subpened to appear on February 19, 1981. However, Mr. Salerno failed to appear on that date due to ill health. His attorney advised the subcommittee that Mr. Salerno had suffered a stroke in January 1981, resulting in a partial paralysis from which he had not then recovered. He also suffered from hypertension and other disorders. Mr. Salerno's physicians as well as the Capitol physician, Dr. Carey, confirmed Mr. Salerno's inability to testify, and his subpena was continued.

Between February 19, 1981, and today, Mr. Salerno's physicians have supplied periodic reports to the subcommittee staff at the staff's insistence, concerning Mr. Salerno's physical condition. Those reports indicate that Mr. Salerno still is physically incapable of testifying here. On Monday, October 26, 1981, the subcommittee staff received another sworn report from one of Mr. Salerno's physicians, Dr. Goodgold, stating that Mr. Salerno's health prohibited his appearance. I submit that report to the subcommittee as an exhibit.

It is our understanding that Mr. Salerno's attorney, Thomas Fortuin, is present here today to personally advise this subcommittee of Mr. Salerno's inability to appear, and that he will present another report from another of Mr. Salerno's physicians, Dr. Larragh.

Senator Rudman. Do you have any questions of this witness?

Senator Nunn. No; I don't have any questions. Thank you, Mr. Maria, for your continued help in this matter.

Senator Rudman. Thank you very much.

The subcommittee calls Anthony Scotto.

Senator Rudman. Mr. Scotto, would you raise your right hand.

Do you swear the testimony you are about to give in the course of this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Scotto. I do.

TESTIMONY OF ANTHONY SCOTTO, FORMER ILA INTERNATIONAL GENERAL ORGANIZER AND PRESIDENT, LOCAL 1814, BROOKLYN, N.Y., ACCOMPANIED BY HAROLD UNGAR, COUNSEL FROM WILLIAMS & CONNELLY, HILL BUILDING, WASHINGTON, D.C.

Senator Rudman. Would you state your name, please?

Mr. Scotto. Anthony M. Scotto, S-c-o-t-t-o.

Senator Rudman. Would you state your address, please?

Mr. Scotto. Danbury Federal Corrections Unit.

Senator **Rudman**. Mr. Scotto, in the interest of making you aware of your obligation under the law to testify fully in this hearing, I will point out the following matters to you.

First, the subcommittee has legal authority to compel your testimony. Under Senate Resolution 57, we have the right to subpena the testimony of witnesses. We also have the right under Senate Resolution 361 to require by subpena the testimony of witnesses before this subcommittee.

We have provided you with a copy of those rules. You should be aware of the penalities for either refusing to testify or for testifying falsely.

Under the United States Code, for refusing to answer any questions pertinent to the question under inquiry, you could be prosecuted for contempt of Congress and punished by up to a year in prison.

Under 18 U.S.C. 1621 and other statutes for testifying falsely on material matters, you could be prosecuted for perjury and imprisoned for up to 5 years. You may be represented by counsel to receive legal advice concerning your response to our inquiry.

Are you represented by counsel today?

Mr. **Scotto**. Yes, I am, sir.

Senator **Rudman**. Would counsel please identify himself, name and affiliation and address?

Mr. **Ungar**. My name is Harold Ungar. I am from Williams & Connelly, our address is Hill Building, Washington, D.C.

Senator **Rudman**. Thank you, Mr. Ungar.

Mr. Scotto, you have a right under subcommittee rules to consult counsel before you answer any question. You also have the right to not incriminate yourself in any criminal matter by virtue of your testimony before this subcommittee?

Do you understand your rights and obligations as a witness before this subcommittee?

Mr. **Scotto**. Yes, I do.

Senator **Rudman**. At this point, since Senator Nunn had chaired most of these hearings last year, early this year and has led this inquiry, I will turn the questioning over to Senator Nunn.

Senator **Nunn**. Thank you, Mr. Chairman.

Mr. Scotto, what is your permanent home address?

Mr. **Scotto**. 8220 11th Avenue, Brooklyn, N.Y.

Senator **Nunn**. Where were you born?

Mr. **Scotto**. Brooklyn, N.Y.

Senator **Nunn**. What is your current address? Where are you now?

Mr. **Scotto**. I am a prisoner at the Federal Corrections Institute in Danbury, Conn.

Senator **Nunn**. What crime were you convicted of?

Mr. **Scotto**. RICO.

Senator **Nunn**. Under the RICO Statute, when did that conviction occur?

Mr. **Ungar**. It is undoubtedly a matter of record. His recollection is not too precise.

Senator **Nunn**. Generally, what was the approximate date?

Mr. **Scotto**. The latter part of 1979.

Senator **Nunn**. Latter part of 1979?

Mr. **Scotto**. I believe.

Senator NUNN. When did you begin your prison sentence, when did you actually go into the penitentiary?

Mr. SCOTTO. July 23, 1981.

Senator NUNN. Mr. Scotto, did you personally know Carlo Gambino?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, is it true that you are or have been a capo in the Gambino organized crime family?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, we heard testimony during our hearings on the waterfront that during your tenure as an international officer of the ILA and president of local 1814, you met secretly with Carlo Gambino on numerous occasions; is that correct?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Were you, in fact, an officer of the ILA?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Were you, in fact, the president of local 1814 of the ILA?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, for what reason would you at the time you were a high ranking member in a legitimate labor organization regularly meet with a man who has been identified by law enforcement as a recognized head of one of the major organized crime families in the United States?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, do you know Emilio Dellacroce?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Is it true that since Carlo Gambino's death you now answer to his successor, Emilio Dellacroce?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, I am not going to ask you but a few more questions. We of course, have many, many questions we would like to ask you.

Your name came up many times in the hearings we had on the corruption problems in the longshoreman's union. So at this point you are not testifying but you are exercising your constitutional rights which I understand. So I will just ask you a few more questions.

Your close associate and cousin by marriage, Frank Leonardo, has succeeded you in the position of president of the Brooklyn, ILA Local 1814; is that correct?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Did you have any role in securing that position for him as president of local 1814?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Is it true that Frank Leonardo received his position as president of local 1814 as a direct result of your continuing influence and control over local 1814?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, is it true that you are still exercising what is tantamount to control of local 1814 through Frank Leonardo?

Mr. SCOTTO. Sir, I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. You succeeded your father-in-law, "Tough" Tony Anastasia, president of Brooklyn Local 1814 at a relatively young age of 28.

Is it true that you sought the assistance of organized crime figures such as Michael Clemente and Carlo Gambino in getting that position?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, on a tape recording dated January 13, 1978, you discussed with Tony Montella the fact that you attended a meeting with Montella and Clemente in response to his summons by Clemente; is that accurate?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me.

Senator NUNN. Mr. Scotto, why would you, a known leader, a political force in New York State and at that time, president and an international officer of the respected labor union, legitimate labor union, obey the orders of Michael Clemente, a convicted felon and a high-ranking member of an organized crime family who held no position in the ILA?

Mr. SCOTTO. I respectfully decline to answer the question on the ground that any reply I may give may tend to incriminate me, sir.

Senator NUNN. Mr. Chairman, I think that is all the questions I will have. Of course, we had hoped to go into considerable detail with Mr. Scotto, but he is exercising his constitutional precedent.

Senator RUDMAN. Senator Nunn, I believe that Mr. Scotto's testimony or to be more precise, lack thereof this morning, does serve a purpose. It serves a purpose of, I think, just reinforcing what this subcommittee has been trying to do under your leadership last year and indicating the need to reform.

I also think that we ought to very seriously consider whether or not this is not a prime case for the use of immunity by this subcommittee. This witness probably has a great deal of information that bears very heavily on organized crime's involvement with labor.

I think we ought to explore with staff the possibility of giving this witness immunity and compelling him to testify.

Do you have any other comments, Senator Nunn?

Senator NUNN. No. But I agree with that suggestion. I think that ought to be something we discuss with staff and I think we ought to discuss it in the subcommittee. I think it is a possibility. This subcommittee has done that before. I think Mr. Scotto would be able to tell us a great deal that would be of direct legislative interest in this whole area if he had immunity. I think it is an idea that we ought to discuss.

Senator RUDMAN. You are dismissed, Mr. Scotto.

Mr. SCOTTO. Thank you.

Senator **Rudman**. Is an attorney Fortuin in the hearing room?

Mr. **Fortuin**. Present, Mr. Chairman.

Senator **Rudman**. Mr. Fortuin, it is my understanding that you will be essentially giving testimony.

Do you have any objection to taking the oath here this morning?

Mr. **Fortuin**. I have no objection. I don't intend to testify. But I will.

Senator **Rudman**. I believe anything that you state in behalf of your client here I would consider testimony.

Do you then swear the testimony you will give in the course of your hearing this morning before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Fortuin**. I do.

TESTIMONY OF TOM FORTUIN, ATTORNEY FOR ANTHONY SALERNO, 1819 H STREET NW., WASHINGTON, D.C., FEDERAL BAR BUILDING WEST

Senator **Rudman**. Would you please identify yourself and your affiliation and address?

Mr. **Fortuin**. My name is Tom Fortuin. I am an attorney for Anthony Salerno. My address is 1819 H Street, Northwest, Washington, D.C. That is the Federal Bar Building West.

Senator **Rudman**. Mr. Fortuin, would you please represent to this subcommittee why your client is unable to appear this morning?

Mr. **Fortuin**. Yes. Thank you, Mr. Chairman.

Since my last appearance before the subcommittee, we have submitted to the subcommittee, on a biweekly basis, sworn statements from Dr. Goodgold, who is the neurologist who has been treating Mr. Salerno's stroke and the followup on his stroke.

In the statements, Dr. Goodgold has indicated that Mr. Salerno is unfit to testify before the subcommittee and by a sworn statement dated October 20, 1981, which I have already submitted to the staff and which has been marked as an exhibit this morning.

[The statement referred to was marked "Exhibit No. 27," for reference and may be found in the files of this subcommittee.]

He indicates that he is still of the opinion that as of this time, Mr. Salerno is not physically fit to appear before the subcommittee.

I have before me this morning, I would like to submit to the subcommittee, an additional report. This one is from Dr. John H. Laragh, L-a-r-a-g-h.

Dr. Laragh is Hilda Altschul master professor of medicine, and he is the director of the Cardiovascular Center and Hypertension Center, chief of the cardiology division of the department of medicine at the New York hospital, Cornell University Medical Center, New York.

He is a cardiologist but he has also followed Mr. Salerno's condition which developed in part from a preexisting condition of hypertension which Dr. Laragh was treating.

Dr. Laragh's opinion discusses Mr. Salerno's condition and I won't belabor that.

Senator **Rudman**. We will include the entire opinion in the record.

Mr. **Fortuin** Thank you, Mr. Chairman, and Dr. Laragh does indicate in this statement, which he has indicated is under the penalties of perjury, that as of October 22, 1981, last Thursday, he is of the opinion that Mr. Salerno is not in any fit condition medically to testify before the Senate, or any other civil or governmental agency.

I will submit this letter for the record. On the basis of this record, consisting of bi-weekly reports and the two sworn statements today, Mr. Chairman, I would move that Mr. Salerno be excused from any further compliance with the subpena.

[The material referred to was marked "Exhibit No. 28," for reference and may be found in the files of the subcommittee.]

Senator NUNN. Mr. Chairman, let me just suggest, Mr. Fortuin, I think, has been forthright and candid with our subcommittee and we appreciate your cooperation. We have had the Capitol physician monitoring this situation very carefully and it is our understanding from him that this is a legitimate illness.

I would not want to dismiss Mr. Salerno from the subpena without further discussion in subcommittee. I think we ought to hear from our staff on that. I think it is something we could consider, but if he does recover and is able to testify, he does have a great deal of information presumably that we would be interested in. So I would prefer to defer that question, Mr. Chairman.

Senator RUDMAN. I share that view. I think we will take your request under advisement and discuss it with the staff and the subcommittee.

Do you have any other questions?

Senator NUNN. No, I want to express my appreciation. You have been frank and candid.

Mr. FORTUIN. I thank you for your courtesy.

Senator RUDMAN. We also appreciate your cooperation and being forthright with us and giving your testimony this morning.

You are dismissed as a witness by this subcommittee.

Do you have a closing statement?

Senator NUNN. No; I don't have a closing statement, Mr. Chairman. But I would like to just announce that we will be meeting tomorrow morning in room 224 of the Russell Building at 10 a.m.; is that correct?

Senator RUDMAN. That is correct.

Senator NUNN. We will be hearing from Mr. George Lehr, executive director of the Teamsters Central States, Southeast, Southwest Areas Health & Welfare Pension Funds.

We will also be hearing from the Internal Revenue Service.

Our next hearing, as I understand it, is now scheduled for next Tuesday and we will announce the time.

Senator RUDMAN. That is correct.

The subcommittee will stand in recess.

[Members of the subcommittee present at the time of recess: Senators Nunn and Rudman.]

[Whereupon, at 12:33 a.m., the subcommittee recessed, to reconvene Thursday, October 28, 1981.]

GOVERNMENT'S ABILITY TO COMBAT LABOR MANAGEMENT RACKETEERING

THURSDAY, OCTOBER 29, 1981

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 224, Russell Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Warren B. Rudman presiding.

Members of the subcommittee present: Senator Warren B. Rudman, Republican, New Hampshire; Senator Sam Nunn, Democrat, Georgia; and Senator Lawton Chiles, Democrat, Florida.

Members of the professional staff present: Michael C. Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; and Katherine Bidden, chief clerk.

[Members of the subcommittee present at commencement of hearing: Senators Rudman and Nunn.]

Senator RUDMAN. The Senate Permanent Subcommittee on Investigations is now in order.

Our first witness this morning is Mr. George W. Lehr, executive director, Teamsters Central States, Southeast & Southwest Areas Health & Welfare Pension Funds, Kansas City, Mo.

Mr. Lehr, it is the procedure of the Senate Permanent Subcommittee on Investigations to administer the oath before testimony of all witnesses. Will the other two gentlemen with you this morning be testifying as well?

Mr. LEHR. We do not anticipate that, Senator.

Senator RUDMAN. If they should have, we will administer the oath at that time.

If you will please stand.

Senator NUNN. You could remain seated.

Senator RUDMAN. I am sorry, fine.

Will you please raise your right hand?

Do you swear the testimony you are about to give in the course of this hearing this morning will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEHR. I do.

Senator RUDMAN. Would you give us your name and address?

TESTIMONY OF GEORGE W. LEHR, EXECUTIVE DIRECTOR TEAMSTERS CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS, HEALTH AND WELFARE PENSION FUNDS, KANSAS CITY, MO., ACCOMPANIED BY THOMAS J. GUILFOIL AND JAMES G. WALSH, ATTORNEYS

Mr. LEHR. My name is George Lehr. Currently, I live at 1015 West 114th Terrace, Kansas City, Mo., and about to establish residence in Chicago.

Senator RUDMAN. And your present position?

Mr. LEHR. I am the executive director of the Central, Southeast and Southwest areas health and welfare and pension funds.

Senator RUDMAN. Mr. Lehr, we understand that you have a prepared statement this morning.

Mr. LEHR. I do, Senator.

Senator RUDMAN. That statement is of some length. You are certainly free to give the entire statement. If you wish to summarize any part of it, you may do so. The entire statement, whether you give it orally or not, will be incorporated into the record.[1]

Mr. LEHR. Thank you, Senator.

Senator RUDMAN. You may proceed.

Mr. LEHR. I am very pleased that the subcommittee has granted my request and the request of the trustees of the Central States to appear here today.

I propose to state the intentions and concerns of the trustees of the funds, as well as my own, with respect to this subcommittee's oversight inquiry of the Department of Labor's investigation of the Teamsters Central States Pension Fund, an investigation, I am told, that began in January 1976 and continues to date.

I also propose today to review the continuing negotiations the funds have had since June 1981, with the Department of Labor and the IRS, and to discuss the fund's purpose and progress in the development of a comprehensive settlement proposal guaranteeing that, for a minimum of 10 years, pension fund assets will continue to remain under the exclusive management and control of the Equitable Life Assurance Society of the United States, or other ERISA-qualified independent investment managers either retained by Equitable or approved by the court after notice to the Secretary.

As the Senators are aware, the pension fund provides retirement benefits to over 400,000 participants and beneficiaries. The continuing objective of the fund, and the commitment of the trustees and myself as executive director, is that the business of funding and paying retirement benefits and serving our participants be conducted under a professional, efficient, and, in fact, superior management program. The exclusive purpose of the trustees is to insure that this fund is one of the finest in the country and that its reputation does reflect its quality.

Since our responsibility is to administer employee benefit plans, then a working relationship with Government agencies chartered to regulate benefit plans is a very sound and necessary goal.

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[1] See p. 288 for the prepared statement of Mr. George W. Lehr.

The trustees of the fund desire and are committed to work toward an open and communicative relationship with the Department of Labor and other appropriate Government agencies. The trustees' commitment is grounded in the belief that a viable Government relationship is in the best interest of the participants and that after more than 5 years of the closest scrutiny ever given, in my opinion, to any employee benefit plan in the country, the timing is right for productive and beneficial communications.

With confidence in the pension fund's operation and in the performance of the professional staff, the trustees stand ready to participate in a program of communication, cooperation, and good-faith dealings with the Department of Labor and other various governmental agencies. And while the trustees take a strong public posture concerning communication and cooperation, I think it is appropriate to stress that the component of good faith is very important to us from both parties' standpoints.

Cooperation is, in fact, a two-way street, in my opinion.

I am not here to hash and rehash the relationship between the fund and the Department of Labor in years and investigations and lawsuits past. I might say at this point, even though we had breakdown in negotiations, we have had very professional and up-front dealings with the Department of Labor. I have every reason to hope and believe those will continue. I am here on behalf of the trustees to suggest a future Government fund relationship of reasonable men working together to obtain the best managerial and investment performance possible. It is the trustees' commitment that merit, accomplishments and growth potential of the fund will no longer be ignored or buried under an avalanche of unsupported or irrelevant charges or pointlessly tied to ancient litigation.

This fund is not going to be a second-class citizen.

A significant step was taken several months ago with the commencement of negotiations between the fund, DOL, Internal Revenue Service and the plaintiffs in pending class litigation. The trustees' objectives in entering negotiations was to effect a comprehensive settlement of all existing disputes between the funds, DOL, and the the class action plaintiffs. It is my belief that these negotiations are being conducted in good faith and have been conducted in good faith by all parties, and the results to date, I feel, have been promising.

The subject and status of these negotiations impact on the inquiries of this subcommittee, and I will briefly describe the components of a comprehensive settlement proposal that the trustees have submitted to the DOL and to attorneys for the class action plaintiffs.

The vehicle proposed by this subcommittee, and, Senators, I think this becomes very important for a comprehensive settlement of disputes is a consent decree enforceable through the U.S. District Court.

I am very pleased to be able to sit here today and tell you that the trustees are agreeable to a consent decree format in the belief that it is what it will take to achieve a comprehensive settlement. The trustees and I are aware of this subcommittee's expressed concern and dissatisfaction with the 1977 settlement between the fund and the Labor Department and the IRS because the terms were not embodied in a justicially enforceable decree. In light of this subcommittee's strong recommendation that any 1981 settlement be via a consent decree, the trustees, as a threshold issue, are willing to accept that vehicle as a component of the settlement.

Senator NUNN. I might just say at that point, Mr. Lehr, I think that is a very positive statement.

Mr. LEHR. Thank you, Senator.

Senator NUNN. And I think it is something we have felt a long time very, very important in this area. So I do accept that as a good faith statement and a very positive gesture.

Mr. LEHR. Senator, I will say I appreciate your comments. I would say I think we would be very foolish to come here today and say we are not willing to accept a consent decree when we think it will, in fact, be in place in the not-too-distant future.

I believe it is appropriate to note, and the record should reflect, that a consent decree is not an admission or suggestion of misconduct by the pension fund or any person associated with the fund. Indeed, in light of the present excellent business conditions at the fund, and I will elaborate on specifics in a moment, we believe that a consent decree is unnecessary to continue to improve the pension fund operation. However, as I said, as an initial concession regarding the use of a consent decree was deemed by the trustees to be strong good faith demonstration necessary to get these settlement negotiations online and to ultimately terminate several very expensive adversary proceedings.

We think it is very necessary.

Concerning the expense of pending proceedings, I refer to the costs of litigation incurred by the fund, costs incurred by the Department of Labor and the other agencies, costs incurred by the private litigants and a significant drain on judicial resources.

I also refer to the intangible costs of drained manpower and time and attention devoted by all parties to maintaining their positions in complex litigation.

Senators, I suggest that the Central States Pension Fund and the Government agencies that you oversee, working in a climate of reason, can make far better use of their resources. That statement in no way is supposed to say we don't want to ever be investigated again. Obviously the Government has a role, we have a role and where investigations are appropriate, there will always be investigations.

I appear here today to solicit the interest and attention of the subcommittee to the trustees' immediate goals, compromising on a reasonable court-approved basis all outstanding litigation and controversies; codifying the fund's present outstanding and successful asset management and administrative practices and procedures and turning our entire resources and energy to what must be our full-time job, serving the needs of participants.

Having resolved for purposes of negotiation, the vehicle of settlement, the next question is the subject, the scope and terms of that settlement. As I have indicated, the comprehensive settlement proposal addresses several areas of dispute. The first item of negotiation is professional and independent of pension fund assets. The settlement contemplates that for a 10-year period of the consent decree, pension fund assets will be under the management and control of a qualified investment management. The trustees believes this proposal satisfies in letter and spirit the concerns expressed by this subcommittee.

Senator RUDMAN. Mr. Lehr, let me go back for a moment. I assume that in your statement, as we have it before us—you eliminated, I think maybe accidentally, the word "independent" following "qualified." I believe that was just a slip of the tongue. That should read, "Qualified independent investment management", am I correct?

Mr. LEHR. I told my lawyers we would never get by with that, Senator. Yes, that was a slip of the tongue.

Senator RUDMAN. I just kind of like to follow testimony.

Mr. LEHR. I am sorry, that was a slip. I stand by the statement, whether I say it this way or not.

The possibility that the pension fund and the Labor Department will develop a comprehensive consent decree is perhaps best addressed with some preliminary reference to the asset management experience of the past several years. The history of the 1977 creation of an independent professional investment manager program to control all of the pension fund is no secret to the members of this subcommittee.

Senators, the next couple of pages lay some groundwork to Secretary Marshall's testimony and comments in the past. I would like to pass over those and go to page 7.

In the 4 years and several months since the testimony, the relationship among the trustees and Equitable and Palmieri have matured into strong mutual bonds of trust, confidence, and harmony. All of the parties to that relationship have, for several years, recognized they have formed a joint venture which should be kept alive.

If the Equitable arrangement can be fortified by a consent decree that institutionalizes its concept—the concept of independent professional investment managers, and I might add independent professional investment managers the size and strength of Equitable, so if that is of anyone's concern—as a permanent fixture at the pension fund, then it would be foolish and in fact imprudent to burden the pension fund with a consent decree that was only half a loaf, a consent decree that left open sores, painful and costly wounds. If a consent decree can achieve a fair resolution of all Government grievances that affect the fund—and we believe very strongly that it can—then that is the kind of decree needed. It is needed to best insulate the participants and beneficiaries of the fund from the cost of perpetuating a variety of litigation that, on objective scrutiny, in my opinion, simply cannot be justified on any reasonable cost-to-benefit analysis.

With the growth and maturity of every healthy relationship, areas of improvement are discovered from time to time. In mid-1978, Equitable, in its role as investments fiduciary of the funds, revised its investments policy statement to state a real estate objective.

I think it is important because, Senators, I realize there are some concerns regarding the real estate question of the Central States. I want to take a moment to go through the history as to why, in the new Equitable agreement, the real estate language exists.

[At this point, Senator Chiles entered the hearing room.]

Mr. LEHR. There was an amendment to investment policy statement, August 1978, which stated, "Existing real estate assets will be reduced to no more than 25 percent of the total pension fund assets."

Senator NUNN. I want to say one thing at this point before we get into this. I read your statement and you make good points here. I will have questions on this. I don't think the subcommittee's position has ever been that real estate has never been a good investment.

Probably the last 15 to 20 years it has been the best, with inflation raging on and on. But that is the area that you recognize where you have had tremendous abuse and tremendous allegations of abuse.

So that is the background here, not the question of whether real estate is as good an investment as securities. It is the history of this fund that gives us great pause in this area.

Mr. **Lehr**. Senators, I appreciate your concerns.

I will tell you what I will do. I think there are good points in here. I will be glad to move on. I think it is very important the structure as to why we got back into real estate, I think, is spelled out in here.

If the Senators don't object, I will move through the quotes in that structure.

Senator **Rudman**. Mr. Lehr, that is your choice. If you feel for purposes of this hearing and for maybe the members of the subcommittee who have not had a chance to read your statement, that you want to address any of those, feel free to do that.

I don't want you to feel hurried and rushed. We want a very full and complete hearing and a good record today. You do what is comfortable.

Mr. **Lehr**. I will proceed. Senators.

Thus, for example, it was at a monthly meeting of the trustees in October 1978 that Equitable disclosed to the trustees the fact that Equitable had decided to formulate an ultimate 25-percent real estate objective and that Equitable's position was that the Equitable 25-percent target would be reached about the third quarter of 1980.

At a meeting of the trustees in January 1980, the 25-percent target was again addressed and the minutes reflect the following.

Mr. Lopardo, who has an excellent relationship, Equitable's vice president, indicated that at mid-1980, presumably having reached the point at which only 25 percent of fiduciary assets consisted of real estate-related assets. Equitable would begin to consider new real estate investments.

At a meeting of trustees in July 1980, Mr. Lopardo again addressed the subject. He pointed out to the trustees and others that Equitable estimated the 1980 cash flow of the pension fund to be in excess of $450 million and, therefore, new securities specialist managers would be appointed by Equitable.

He added that if the pension fund continued to invest in securities and experience 6½ percent and all rate of return from securities investments, Equitable projected that at the end of 1984, the assets of the fund would be $5.5 billion in securities and a half billion dollars in real estate, or a total of $6 billion.

Mr. Lopardo added, I might say, based on the return we have had since that projection, we now estimate they will be now in the range of almost $7 billion. Mr. Lopardo stated Equitable will look very, very closely in the next few months at real estate investments and coming back to the trustees.

That was followed by a meeting of August 19 and 20, 1980, where Leo Walsh, of Equitable, attended. That was followed by the meeting with the trustees in September 1980, where Mr. Lopardo made several comments regarding the real estate acquisition program to be administered by Equitable.

I would like to put 10 underlines under "administered by Equitable."

That is the only intent there has ever been that the administration would be totally by Equitable. This would be primarily directed to owned real estate without precluding mortgages.

Mr. Lopardo stated that the prior real estate reduction had been tied to diversification and marketability real estate assets.

Now that those objectives have been reasonably satisfied, he stated, Equitable feels that involvement in equity real estate investments provides a superior return over a period of time and also provides a hedge against the inflation, and so forth.

At a meeting in December 1980, Mr. Lopardo again addressed the subject. The comments from the meeting are indicated.

At that time, November 30, 1980, real estate-related assets of the fund had fallen to 22 percent of all assets under the jurisdiction of Equitable.

The plan and direction of the new real estate acquisition program, chartered for the pension fund by Equitable, one of the most if not the most respected and prominent real estate investors in America, and I have been told there is hardly a major—let's define major in the terms of $50 million or more—real estate program where money is sought in some form that does not go through the Equitable Life Assurance Society. That one of the employee benefit plans experts have recognized for years the soundness and prudence of putting large percentage of pension dollars into real estate investments.

More than 3 years ago, Equitable gave to the trustees its prediction that new real estate investments by the fund would be considered by Equitable as early as mid-1980. As 1980 drew to a close, the contract changes to permit Equitable's appointment as investment manager for new real estate became a natural objective to realize the renewal and modification of the 1977 contractual agreement.

I would like to stop here for a moment and tell you that the discussions, there have been many allegations the trustees wanted to take back over the assets. Gentlemen, the discussions with Equitable were initiated by the trustees. They were initiated without any urging, without any involvement with the Department of Labor or any other Government agency. They were initiated almost 2 years before the contract ended. The trustees want to renew the relationship with Equitable.

I think it is important to note that this was not done under the gun from any Federal agency. It was done by the trustees and it was done at their initiative and those discussions again, as pointed out here—in late 1980, these discussions resulted in mutual agreement by Equitable, Palmieri, and the trustees in the late spring and early spring and early summer of 1981.

A memorandum by Equitable dated May 11 and June 5, 1981, sets forth the details and substance of the 1981 investment management renewal by the trustees, by Equitable and by Palmieri. I understand that the subcommittee has already examined that memorandum, or the staff of the subcommittee has. On May 21, 1981, the Equitable board of directors, acting on the recommendation of Equitable executive vice president Leo Walsh adopted a resolution in part as follows. And the resolution, I think, gentlemen, speaks for itself.

The pension fund board of trustees followed Equitable's lead through a resolution they adopted at a meeting on June 5, 1981, as did the Palmieri board of directors on July 13, 1981. Also, on June 17, 1981, a formal memorandum of agreement was executed by Equitable and by the trustees. The Labor Department has been kept informed as these events unfolded, especially in light of the Government role in these renewal contracts; the Government assistance, as former Secretary Marshall called it in his appearance before this subcommittee on July 1977.

For one thing, I was informed that the master agreement, dated June 30, 1977, requires written consent by the Secretary relative to the change in the appointment of Equitable and Palmieri contemplated for the 1981 renewal contracts. For another, I am informed that Equitable and Palmieri require affirmation and enlargement by the Secretary of Labor of certain ERISA exemptions and advisory opinions issued at the time of the mid-1977 agreements.

More than 5 months after the Equitable board of directors approved these 1981 renewal contracts, they remain up in the air. Informed by Equitable that the Government's unexplained delay for several months in attending to requests for necessary Labor Department clearance was blocking the pension fund from access to and participation in millions of valuable real estate investments and that, as a result of the delay of the commencement date, the new real estate acquisition program would be no sooner than mid-December 1981 and perhaps much later, the trustees last week authorizes their attorneys to seek an injunction that would end the Labor Department's indecision.

I am hopeful that with the impetus of a Federal judge, the Labor Department will soon provide that approval that is needed to protect the participants and beneficiaries of the fund. I think it is very important to note that one problem we have in this connection with DOL, as I understand it, and has been conveyed to us, is to find out what the specific objections were. This litigation is primarily to resolve the situation so we can move ahead with the agreement.

I now invite your attention to several features of the 1981 renewal contracts which the trustees signed in August 1981.

Investment policy statement: The principal 1981 renewal contract incorporates a new investment policy statement drafted by Equitable and approved by the trustees after joint review and revision.

The role of the trustees in that approval and in any further change in the investment policy statement is natural and appropriate for any employee pension plan board of trustees, especially in view of the exclusive responsibility of the trustees for the actuarial soundness and benefit design and distribution. Just as there is joint effort by the pension fund actuary, Daniel F. McGinn and his firm, and Equitable in actuarial and investment matters in which they share a need for unity and understanding, so there must be input of the trustees and of Equitable in this 1981 restatement and in any future revision of the investment policy of the pension fund.

New real estate: There seems to be no question from any quarters, including GAO, about the fact that Equitable has achieved superb investment performance on behalf of the pension fund. The new direction, the new real estate acquisition program approved and commissioned by the Equitable directors on and since May 21, deserves, prompt and unequivocal Government support.

Transfers between Equitable real estate and securities portfolios: This new feature, unique to and designed by Equitable is the base for the only new ERISA exemption sought by Equitable. Counsel for Equitable has explained to the Labor Department Equitable's need for this new ERISA exemption as follows. And I have a letter there from counsel to Equitable, Mr. Haas, provided for the record.

The interportfolio transfer capacity of Equitable, which is designed to enable Equitable "to react quickly to current market conditions" and thus to better serve the interests of the participants and beneficiaries of the fund is not believed to be the source of any serious objection based on all the consultations we have had with various agencies.

Real estate management fees. The revised 1981 real estate management fee schedule, which is to become effective upon commencement of the new real estate acquisition program is attached to the renewal contracts for both Equitable and Palmieri, the revised fee schedule has been determined to be fair, reasonable and competitive to the pension fund. I am told that the cost of administering real estate is significantly higher than the cost of other portfolio's administration and that that is the reason for the difference in fees.

Benefits and the administration accounts. On July 15, 1981, the trustees adopted a resolution accepting a new formula proposed by IRS for internal management of the B. & A. account. That agreement between the trustees and IRS is still in effect, a fact confirmed last week after related discussions by the pension fund with the Labor Department and IRS when the discussions were discontinued between Labor and IRS. It is expected to be formalized in a new determination letter for the fund and from IRS in the near future and we are totally willing to accept IRS.

It is a matter of record beyond serious dispute that internal management of the benefits and administration account has been superb. I give you the performance of the B. & A. account and the assets managed by investment managers and the overall rate of return.

Equitable's executive vice president, Leo Walsh, testified during a House oversight hearing about the pension fund in March 1980, that known facts about the B. & A. account revealed to him a reasonable operating reserve for handling administrative transactions and for running the business of the fund other than the investment business, investing in short-term industries would be reasonable business practice on this reserve.

I am convinced there is not the slightest disagreement between the trustees and the government about the future control of management of the B. & A. account and as I understand it the testimony given here yesterday would concur in that.

Term of renewal contracts. Instead of the 5 year minimum term established in the 1977 agreements with Equitable and Palmieri, the 1981 renewal contracts put the three parties on an equal footing, each able to sever its relationship upon prior notice of 180 days, a sound business practice for a sound employee pension plan and a practice that may even be dictated by ERISA in the actual circumstances that exist.

Apart from the 1981 renewal contracts, there are other elements of the proposal settlement. The pension fund, for instance, currently maintains a staff of internal auditors to monitor the administration and management of its affairs.

Gentlemen, I will skip over the next remainder of this paragraph. Basically we are saying that we would like to have, we will have a certified public accountant heading this staff and that they will report directly to the trustees. Again I don't believe this is an area of any disagreement. An additional component of settlement relates to the fund's litigation defense costs policy. The settlement proposal provides that to the extent the fund has paid or will pay attorneys' fees or other litigation defense costs the fund will continue to comply with all terms of the written policy statement entitled "litigation defense costs policy." The policy statement has been submitted to the Secretary of Labor in conjunction with the settlement proposal and its terms are proposed to be incorporated in the consent decree.

Another current dispute between the Department of Labor and the fund concerns the fund's purchase and maintenance of an airplane for use in fund business travel. The trustees have taken a strong business motivated position that the purchase of the plane constituted a sound investment which substantially enhanced the efficient operation of the fund.

Senator RUDMAN. What kind of aircraft is that?

Mr. LEHR. It is a Falcon-20. There has been an airplane in use by the fund for more than a decade. I think it is safe to say, however, in view of the Department of Labor's concern and as part of a comprehensive settlement to terminate the host of adversary proceedings at issue, the trustees are prepared to accede to the Department's demands first to sell the airplane, which I might add is expected to yield a profit of more than $1 million, and second, under the terms of the consent decree to refrain from the purchase of another aircraft without court approval and after notice to the Secretary of Labor.

In my introductory remarks I addressed the matter of pension fund and Labor Department cooperation, communication and the exercise of their respective responsibilities. The proposed consent decree incorporates the cooperation clause and provides that throughout the term of the decree quarterly meetings will be held between representatives of the fund and representatives of the Secretary to review compliance with the consent decree and other material circumstances in accordance with reviewing and reporting procedures to be mutually established.

The proposed settlement includes the fund's agreement to produce, on Department of Labor request, documents and information in its control as it is consistent with the obligation and rights of the fund and its participants and beneficiaries. Senators, I am not being critical because I spent many years in Government myself but I think one of the most difficult things I have faced since coming to the fund is the somewhat uncoordinated requests from various agencies and some within the Department of Labor. Again I am not being critical. I think it is the nature of the size of the fund, nature of the size of DOL. I think one of the most important things we can do is set up a forum, whether it be monthly or quarterly, we can all sit down, find out where there is not cooperation, find out where are problems and sit face to face and embody that into a consent decree so we could improve the communications and provide the information as requested.

I believe that the trustees' proposed commitment to a formal program of cooperation through quarterly meetings and voluntary reporting is a significant and innovative step. I am now beginning to read what I just said, so I won't read it. I have already touched on the trustees' commitment to use the best efforts of their offices to refrain and end the resource drainage and litigation that has for years been pending between the Department and the union members as plaintiff and the fund and certain former trustees as defendants.

The major litigation is the Department's case titled *Marshal* v. *Fitzsimmons* and the litigation titled *Dutchak* v. *International Brotherhood of Teamsters* and *Sullivan* v. *Fitzsimmons*. These cases are pending in the U.S. District Court for the Northern District of Illinois before Judge James B. Moran.

On October 21, 1981, a memorandum of understanding signed by counsel for the private plaintiffs, counsel for the fund and counsel for the International Brotherhood of Teamsters was presented to Judge Moran as a major step toward settlement of these related lawsuits. Although the Department of Labor is not yet a party to the memorandum of understanding, the comprehensive settlement proposal contemplates Department participation, and the memorandum of understanding between private plaintiffs and the fund is dependent on Department participation in final settlement. The trustees are hopeful of that result.

The components of the memorandum of understanding to settle the Dutchak and Sullivan litigation, and which ultimately depends upon Department participation, are several and significant.

The agreement provides that the fund will establish a segregated pool of assets to fund payment of increased benefits under the terms of the settlement. The segregated asset pool will be invested in Government or Government-guaranteed obligations.

Under the memorandum of understanding, the fund commits itself to retroactive application of the current vesting and breaks in service ERISA-qualified terms of the pension plan for the entire period of the plan's existence. The increased benefits that will become available to members as a result of the retroactive ERISA application will be funded by the segregated assets invested in Government obligations.

To the extent that the pension benefits contemplated under this settlement are overdue, the fund will pay beneficiaries interest at 6 percent, and past due benefits will be available to the heirs of a deceased participant.

The memorandum of understanding further contemplates creation of a hardship remedy to provide relief in the situation where a member has long years of service and contribution, yet a technicality not contemplated by the spirit of the rules requires denial of benefits. The hardships provision will permit the trustees, in the exercise of discretion, to award pension benefits in that situation.

The trustees and the private plaintiffs have a shared enthusiasm for this rule which, for the first time, will permit the trustees to take affirmative action to correct uncommon but seriously inequitable situations that inevitably arise when a single set of rules must apply to thousands of individual situations. The hardships category will permit the trustees, under the strict dictates of prudency, to scrutinize substance over form in making final eligibility determinations.

Finally, the agreement in principal provides the fund will increase total and permanent disability benefits by 10 percent.

Increased benefit payments resulting from these provisions are estimated to reach $140 million—present fund assets to be segregated and invested in Government obligations for payment of these benefits as they become due have been actuarily calculated at $40 million. In addition we have worked with our actuaries as to what this would do to our actuarial position and they have indicated that it can be easily absorbed and those numbers have been made available as to a $40 million settlement.

At proceedings on October 21, 1981, Judge Moran stated concerns in common with the trustees, on the issue of resource-draining continued litigation:

> As I think I have made it very clear all the way through, one of my concerns in this whole mass of cases has been the amount of money that can get chewed up in litigation with the actual potential recovery in relation to this total size of the fund being very limited.

Additional settlement of litigation contemplated under the comprehensive settlement agreement—let me finish on the *Fitzsimmons* case, we are now under the order of the court with DOL and the other related parties to have quadralateral negotiations and I hope that this does produce the results and could effectively also produce the consent decree we talked about.

Additional settlement of litigation contemplated under the comprehensive settlement agreement is the case of *Donovan* v. *Nellis* in the U.S. District Court for the Northern District of Florida. The trustees' comprehensive proposal provides for dismissal of the Department's complaint against defendants and dismissal of the trustees' third-party action against the former Secretary of Labor and other former officials of the Labor Department and Internal Revenue Service.

Finally, the dispute between the Department of Labor and the health and welfare fund concerning the fund's claims processing relationship with Amalgamated Insurance Agency will be resolved. I am here to tell you that the trustees have decided to undertake in-house claims processing as opposed to having claims processed by an outside service provider.

The fund and Amalgamated have agreed to the terms of a memorandum of understanding implementing the trustees' decision to establish within the fund a facility to process and directly administer its entire claims program. To expeditiously achieve a claims processing capability, the trustees propose, and the memorandum of understanding contemplates, purchase of that much of the business, including such of the personnel as needed of Amalgamated as is necessary to accomplish these ends.

Senator NUNN. Mr. Lehr, on that point is Amalgamated owned by Alan Dorfman?

Mr. LEHR. Senator, that is what is my understanding. I do not know what the exact stock ownership is.

Senator NUNN. Are you saying that you are now going to terminate that relationship with Amalgamated?

Mr. LEHR. Yes, sir.

Senator NUNN. You are saying you are going to buy out Amalgamated?

Mr. LEHR. Yes.

Senator NUNN. Does that mean you are going to take on some of the Amalgamated personnel? Is that a part of the purchase?

Mr. LEHR. The Amalgamated personnel that will be taken on with the purchase will only be the personnel that we do not anticipate any personnel on the executive level. It would be the personnel that would be on the operating level as we deem appropriate for our operation. There would be a complete severing of the ties with Amalgamated.

Senator NUNN. That means you are not going to be buying Alan Dorfman as part of the deal?

Mr. LEHR. That is right, Senator. That means we are not.

Specification of the purchase will be developed on behalf of the fund by Arthur Young & Co. in conjunction with Amalgamated's consultant to its counsel, Jenner & Block. Once the specifications of sale are established, the trustees and Amalgamated agree that the fair and reasonable purchase price will be determined by independent experts. Specifically, the memorandum of understanding provides that the specifications will be submitted to two independent experts, on a Big 8 accounting firm and the other a management consulting firm of comparable national reputation, with the direction that each conduct an independent analysis to determine the value of assets to be sold. The agreement further provides that, in the event the experts' value analyses differ, the consultants will be directed to average the figures and report the averaged figure as the value of the transaction. The fund and Amalgamated agree to be bound by the experts' valuation.

There will be no negotiation. They will be bound by the experts' valuation.

Senator RUDMAN. Let me interrupt and ask one question. You stated here that they arrive at the value of the assets to be sold. Are you then saying this sale will be determined on the basis of value of assets rather than by any other method of valuation such as multiple of earnings, past performance and so forth?

Mr. LEHR. Senator, that is correct. We have Arthur Young & Co. drawing the specifications for the fund. The instructions are as I have tried to outline and possibly it isn't clear, but the instructions, we want specifications that in fact will buy only what is necessary for the fund to operate their in-house servicing operation, that we are not buying an ongoing business. We are buying the assets that are, only the assets that are necessary for the ongoing operation of our service provider.

Senator RUDMAN. Fine, because obviously with a multiple-ratio approach to purchase of that kind of a going operation, the purchase price could be extraordinarily greater than the value of the assets and in fact is in most cases.

Mr. LEHR. Senator, as I point out, in the next paragraph, that any such transaction must be approved by the Department of Labor. That would be the—we have tried to structure the transaction in such a way that we would be using national accounting firms to draw the specifications, national accounting firms to do the pricing and we have been meeting with and kept apprised of the Department of Labor of the situation regarding this change in service.

Senator RUDMAN. You may proceed.

Senator NUNN. Let me ask one question on that point now. Does Amalgamated have a continuing contract at this point in time as part of the purchase buying back their contract or is that contract terminated?

Mr. LEHR. The contract actually at this point will expire November 2. Senator, there is no intent to buy back the contract. In other words, we would have to renew the contract to buy it back and we are not going to be renewing the contract and then buying it back.

Senator NUNN. After this sale goes through, if it goes through, and after the purchase price has been paid and the assets transferred at that stage what relationship will Alan Dorfman have to the central fund?

Mr. LEHR. None.

Senator NUNN. Absolutely none?

Mr. LEHR. That is right.

Senator NUNN. He will not be an employee?

Mr. LEHR. No, sir.

Senator NUNN. He will not be in any part of the management?

Mr. LEHR. No, sir.

Senator NUNN. He will not be making any decision in the fund?

Mr. LEHR. No, sir.

Senator NUNN. You will not be taking any orders from him indirectly or directly?

Mr. LEHR. No, sir, nor have I.

In addition, as part of the agreement, in the memorandum of understanding, a draft of which has been given to the counsel, it would also mean that there would be no Amalgamated-related concerns that would still be officed in the building.

Senator NUNN. No service is going to be provided after this termination, no service will be provided by Amalgamated or by Alan Dorfman to the pension fund or the health and welfare fund?

Mr. LEHR. That is correct, Senator.

Senator NUNN. So it is a complete servering of relationship with Amalgamated and Alan Dorfman?

Mr. LEHR. That is correct.

Senator CHILES. Given the fact that you set forth that the contract expires with Amalgamated in November which is upon us, and if the trustees are using Arthur Anderson & Co. and Big 8 accounting firms to determine what the purchase should be, couldn't the company, the trustees just as well procure these services? Is it necessary they be procured from Amalgamated? That has been much of the controversy concerning the fund over the period of time that we are talking about, back to 1976. Why is it necessary to purchase from Amalgamated personnel and services at this stage? Why can't you use the same Big 8 and Arthur Young to set up your own personnel and your own fund? Are you going to pay them a big fee for even arranging for the contract?

Mr. LEHR. Senator, first of all the November date was in fact a date where the renewal period for an option expires. Actually, the contract does not expire for service until March 1, 1982. Regarding your second question, we have had a study by Blomquist & Co. and bids were taken from 21, bids were solicited from 21 service providers. Based on these studies it was felt that the best, based on the recommendation of Blomquist it was felt that the best possible service for the fund and for its participants could be done in-house. It was secondly recommended that in view of the fact that Amalgamated has serviced those accounts for some 30 years and that that servicing has been efficient, that the program which existed, the software program which existed, and the personnel which existed in handling those claims is on the recommendation of the third party, that it would be to the best advantage of the fund if it could be acquired on a reasonable profit basis acquire the software and if deemed appropriate, other assets—for the fund to proceed to in-house operation.

Senator NUNN. Do you have a range or estimate of what you think, a ballpark figure, what your purchase price is going to be?

Mr. LEHR. No, sir, Senator and I think it has been very important. I came into this in late August—early September, although I didn't officially come on board the fund until the 5th of October, it has been the 5th of October, it has been very important that dollar ranges and numbers not be discussed in my opinion. I have asked that they not be discussed simply for one reason.

That we have structured a pricing using national independent public accounting firms that we think can ascertain and the way the specifications will be drawn is that we will not be paying anything more. In other words, we will structure this in such a manner that we will be paying anything more than we could do it with an alternate method and this has to be not only the best but the most economical. I think if we start throwing dollar figures around in any format, I have been careful to caution everyone on this, I don't want to in any way, shape or form predetermine the dollars that the independent evaluators will ultimately come up and which will be presented to the DOL for their approval.

Senator RUDMAN. You may proceed.

Mr. LEHR. What the trustees have proposed to the Department of Labor and what I suggest to you today, Senators, is that it is time to reassess the value and efficiency of adversary proceedings and to consider the potential benefits of a program of reasonable and responsible cooperation. The trustees and I suggest that it may turn the attention of the funds and their trustees and professional staff toward creation of new and innovative programs to maximize benefits and economic supports that can and should be made available to our participants and beneficiaries.

Senators, I would like to end my statment with the comment that "we are not here to discuss the mistakes of the past. We are here to tell you of our new determination and our positive actions." I would like for that to have been my comment. However, that was Secretary Donovan's comment yesterday and I totally concur with it.

Senator RUDMAN. Thank you, Mr. Lehr.

I think it would be very helpful to the subcommittee and for the record to have some understanding of your background—educational background, work experience, and so forth. That is not contained in your statement. If you could just give us a general summary of that, it would be helpful.

Mr. LEHR. All right. I graduated from the University of Iowa in 1959. I went with Arthur Young & Co., CPA, and became a certified public accountant. In 1963 I became county auditor of Jackson County, Mo., which is Kansas City. In 1966 I was elected collector of revenue of Jackson County, which in that position handled about $90 million.

In 1970 I was elected the last presiding judge of the County Court of Jackson County which is most noted for the fact that that is where President Truman served prior to the time he came to the Senate. That is where he came to the Senate from. In 1973 I became the first county executive under a restructured form of government in Jackson County and in 1974 I was elected State auditor of the State of Missouri. In 1977 I became president of Empire Bank & Trust in Kansas City and October 1, 1978, I became chairman of the board, chief executive officer of Traders Bank and vice president of General Bandshares, St. Louis, which owns Traders Bank.

Senator RUDMAN. You state, and I can understand the reason for your statement that you, as well as Secretary Donovan, would like to look to the future rather than to the past. We understand that.

[At this point, Senator Nunn withdrew from the hearing room.]

Senator RUDMAN. It is, however, I think necessary to look at some of the things in the past for their historical value in terms of making sure that those errors do not occur in the future. In that general light this entire area of real estate investment of course has a great deal of sensitivity about it, both to this subcommittee, members of this subcommittee and to various agencies. We have been given recent cause for some concern about a case which you alluded to only very briefly in your statement and I would like you to discuss that case because the *Donovan* v. *Nellis* case in Florida seems to be a case in which there have been some allegations of current trustees being involved in real estate investments and repurchases which some people challenged.

I wonder if you might discuss this with this subcommittee to give us a general understanding of what your position is on it, what the facts are in that case that you are aware of, the involvement of current trustees in that, and what this lawsuit is all about.

Mr. LEHR. Senator, I am not fully prepared. I will do it to the best of my ability. As I understand it, it was a case that took place during the transition of trustees, if you will, in the 1976–77 period, that there was some DOL oversight and that is the reason for the third party suit in such a case. We have in our discussions with DOL, while we were talking about a comprehensive settlement, this is no reason not to discuss the case but they have indicated they would not think that would be very difficult to settle that case.

Senator RUDMAN. Did that case not involve the prospective repurchase of some of that real estate by the fund itself?

Mr. LEHR. We bought property of the foreclosure sale I am told, Senator, and when we bought the property at foreclosure sale as I understand it, it is about $200,000 at issue here as far as our bidding in the property at the foreclosure sale.

Senator RUDMAN. Could you identify for us the relationship of the people that essentially benefited from this alleged overpayment?

Mr. LEHR. We took the property and protected it from the low sale and the property is still owned by the fund.

Senator RUDMAN. It is still owned by the fund?

Mr. LEHR. Yes, sir.

Senator RUDMAN. What was the financial institution involved at that time or was the original mortgage placed by the fund itself?

Mr. LEHR. It was placed by the fund itself.

Senator RUDMAN. There seems to be some dispute about this fact and I would like you to submit to this subcommittee for the record all facts and information contained in your files about this transaction. There are allegations that the value differential is considerably greater than you are testifying to this morning. I fully understand you are new to the fund and do not have all of this information. But it is very important that this subcommittee have that information. We thought you might be able to testify about it this morning but if you cannot it is important to us to get this into the record.

It may be that I might yield to Senator Chiles if you would like me to yield, if you have any questions on this issue. You do not.

Mr. LEHR. Senator, we would be glad to furnish you all the details and information to address your question and we did try to base that on what we anticipated. We will be more than happy to supply all the information.

[The document referred to was marked "Exhibit No. 29" for reference and may be found in the files of the subcommittee.]

Senator RUDMAN. I think it is important because if you are talking about looking to the future rather than to the past you have to understand if there is any evidence at all either before this subcommittee or before various agencies that the current group of trustees are engaging in any conduct, I am not alleging that they are—but I am saying if there is any such evidence, it has to either be proved or dispelled, if we are to accept at face value your comments about real estate.

Mr. LEHR. I absolutely understand that.

Senator RUDMAN. Talking about the whole idea of real estate investments I assume that the trustees will play a policymaking role, if you will, in the acquisition of real estate, even though Equitable will be in fact managing that program. Could you describe the relationship that you understand, particularly in the decisionmaking process and the policymaking process?

Mr. LEHR. Senator, the trustees and I would love to have Equitable to testify to this point, the trustees will in no way, shape or form be playing any role in any particular piece of real estate in any acquisition, in any loan. The only role they will play is in the general policy as to the mix of the portfolio, how much indebtedness, how much in equities, how much in real estate. The trustees and this is structured and the trustees desire that if there is a stronger way to structure it they want no part in any way, shape or form in structuring, in being involved in any individual transaction, making choices on any individual transactions but they would only have the oversight responsibility as we believe they are required to be by ERISA as to the mix but not to the specific transaction.

Senator RUDMAN. Then if I understand you correctly under the terms of the contract which are to allow certain transfers between portfolios, real estate and others, you are saying the trustees themselves will play absolutely no role whatsoever in those specific transactions? It will be wholly within the hands of the independent investment managers in this case, Equitable?

Mr. LEHR. That is absolutely right.

Senator RUDMAN. That is so stated in the contract?

Mr. LEHR. That is my understanding and I will tell you this and speak for the trustees. If that is not stated in the contract to the satisfaction of DOL and we have never heard that it was not, we will be glad to structure the contract to so state.

Senator **Rudman**. Does the contract or the proposed contract also provide for a periodic review in any way by the Department of Labor of the transactions themselves within the real estate portfolio.

Mr. **Lehr**. Senator, I would imagine—the contract does not address that but in view of the attitude we have toward the cooperation and the indication that if there were a consent decree we would put cooperation in it, we certainly would have no problem with the Department of Labor overviewing Equitable's decisions. But that is what it would be. It will be overviewing Equitable's decisions.

Senator **Rudman**. I would say to you that generally speaking none of us want Government to intrude in the private sector, but I think with the history of this particular fund in the past—the allegations, some proved, some disproved, about real estate transactions—that the more that this contract can take the attitude that everything will be done in the bright sunlight, I think the better chances you will have of success and essentially a lack of any harassment from any agency.

Mr. **Lehr**. Senator, that is why we are here today. If it can be structured in that sunlight, we sure have no problems with that whatsoever, that the fact that we are willing to enter into a consent decree I think shows that we want the monitoring, that we feel would be appropriate and we don't want to be a second-class citizen but we do want to satisfy this subcommittee. We want to satisfy the Department of Labor and we want the highest and best returns for the participants.

When we can mesh those facts together we will be more than happy to do so.

Senator **Rudman**. Let me move on to another area. In your statement you speak of monthly reports prepared by your internal auditing staff to make sure you have current data for operating purposes. Is it your intention on a voluntary basis to make those available to the Department of Labor on a fairly current basis?

Mr. **Lehr**. Senator, I think, yes, the answer is yes, and I think that there is not a fund in this country that has provided more information in cooperation with the Department of Labor. I don't think there is any fund in this country that has provided 10 percent as much on a cooperative basis over the last several years. We can show you reams of documents we have provided and we have heard no complaint from the Department of Labor in that regard.

[At this point, Senator Nunn entered the hearing room.]

Senator **Rudman**. Finally, I was just curious as to who might have suggested the proposed termination clause that you will write into this agreement, the 6-month termination clause. Was that suggested by the trustees, by Equitable, by your attorneys? What was the genesis, if you will, of this particular suggestion?

Mr. **Lehr**. I was not involved in those negotiations but anticipating that might be a question I yesterday talked with Leo Walsh, vice president of Equitable and he said that Equitable had felt that this was the appropriate businesslike approach to take of a contract of this nature and that that had evolved in the discussions with the trustees.

Gentlemen, I am ready to tell you here today something that is not in my prepared statement. If in fact, first of all the Department of

Labor has never objected in our opinion to the 6-month cancellation clause. If in fact the 6-month cancellation clause is the hangup in this agreement, the trustees and I polled seven of the trustees as of yesterday and was not able to get hold of the eighth. I talked and I will speak with some with no reservations but I will also speak about my conversation with Leo Walsh.

We will negotiate a firm 5-year agreement that can only be terminated with cause if that in fact is the holdup. Again, we are trying to get this agreement on track. We don't know what the problems are with the agreement if in fact the 6-month cancellation clause is the problem, we will rectify that problem, gentlemen.

Senator CHILES. Just on that line, if the agreement is canceled, are there provisions in the consent decree as to how a new servicing agent would be procured, or would that fall back to the trustees?

Mr. LEHR. Senator, the original draft of the consent decree provided for the Department of Labor, they had an outline, a guideline as to the size of the corporations we would be limited to obtaining as a new investment manager, in fact no longer the investment manager. I objected to the guidelines and I objected for this reason.

That with the rates of inflation, not dealing with inflation in particular, things change over a period of 10 years. I did not think the guidelines were realistic. However, in our last meeting with the the Department of Labor I said if that is your hangup, if you want those guidelines I think those guidelines are not appropriate. I think we should write a formula as opposed to guidelines. If you want those guidelines, if that is what hangs this up, we will accept your guidelines even though we don't think they are in the total best interest. Yes, we will structure the necessary guidelines and if Equitable would not be the investment manager that we are not trying in any, we want the best investment manager possible.

We happen to think that Equitable—we think they are the best investment manager possible. We want to give people a comfortable feeling, that the trustees of this fund have no desire whatsoever to manage those assets. I can't say that strongly enough, we will structure whatever document—that is policy of this fund now, whether there is a consent decree or not. The trustees have no desire to manage those assets. We will structure whatever language is appropriate and does not conflict with ERISA.

Senator CHILES. Does the consent decree provide for approval of a new investment manager by the Department of Labor?

Mr. LEHR. As I recall, it provides for notice and approval by the court.

Senator CHILES. Notice and approval by the court?

Mr. LEHR. Notice to the Department of Labor and approval by the court.

Senator CHILES. Thank you.

Senator RUDMAN. Mr. Lehr, just one brief question. This objection about the corporate jet, the Falcon—was this the subject of some question in terms of abuse in the past being used for private purposes? Was this an allegation by the Department?

Mr. LEHR. Senator, I do not recall that there has ever been a question of abuse for private purposes.

Again, I am not sure what all the allegations are, but I have never heard of an allegation of abuse for private purposes. I have heard only the allegations as to the cost-benefit question.

Senator **Rudman**. As I think most people know, these hearings were convened by Senator Nunn last year, who has really taken a major leadership role. Only by accident of elections do I sit here presiding this morning and I am very happy to yield to Senator Nunn for major questioning in this area.

Senator **Nunn**. I hope it was an accident. But I am not so sure. [Laughter.]

Thank you.

Senator **Rudman**. I will give you that one.

Senator **Nunn**. Mr. Lehr, let me just say before I start my questioning, and I will encourage Senator Chiles and Senator Rudman and I have a lot of questions, and I, Mr. Chairman, would defer on the time basis or any time we want to rotate in. I will yield.

Senator **Rudman**. I think we will go on a relatively informal basis and let you proceed. I know you have some questions and if anybody wishes to take the floor, I am sure you will yield.

Senator **Nunn**. Before I start, I do have a lot of questions and some of them you may deem to be unfriendly and rather penetrating, some of them not. But I want to say that your presentation here this morning is encouraging to me. The willingness to enter into a consent decree which we feel and have felt for some time is enormously important, I have already mentioned that as a very positive step, your termination of the connection with Amalgamated, Alan Dorfman, is something, of course, that this subcommittee and the U.S. Senate predecessor of this subcommittee, the old McClellan committee, have been harping on for about 30 years now, long before I got in the Senate, and long before any of us were here. That, I think, is an extremely and enormously important measure, both in terms of practicality and in terms of image of the fund.

So I congratulate you on that step and your final point here this morning that you are willing to enter into a longer term agreement with more safeguards, I also think, is a very positive step.

So I wanted to get that on the record before I begin my questioning.

Mr. **Lehr**. Thank you, Senator.

Senator **Nunn**. The trustees, now, Mr. Lehr, the General Accounting Office reports that the present trustees, that is your present board, repeatedly and openly attempted to compromise and undermine the independence of the assets managers and reassert control by: No. 1, passing resolutions to make the asset managers easy to terminate; No. 2, hiring its own staff of real estate analysts; No. 3, actually managing a considerable amount of assets acquired after Equitable became the asset manager; No. 4, attempting to impede a sale of property by the asset managers, and we won't go into detail on that today but that is a subject of a current indictment that you may be familiar with; No. 5, attempts to terminate Palmieri as an asset manager or severely reduce its fees; and, No. 6, attempt to settle a suit over property by making a $91 million loan out of the B. & A. account in a matter dealing with Morris Shenker. This matter, I think, is the subject of one of the Labor Department's motions to amend its current suit as an alleged imprudent transaction.

In addition, it is our understanding that the current trustees have been named as defendants in the recent suit filed by the Department of Labor claiming fiduciary breaches with respect to a Florida transaction. All of that, as I see it, is a matter of record. At least that is the GAO finding. This brings us to the concern that we have over, first of all, allowing the trustees to maintain control and influence over the fund's moneys or assets, and I know you have been into that with Senator Rudman, and you went into that some in your opening statement. No. 2, letting the trustees be selected without Government participation in the selection process; No. 3, the terms of the new proposal which would give the trustees substantial influence over the assets and the asset managers and some of this you have already addressed. But with this background, this record, I think it is important as a new executive director, and I know you have read a lot of the history of this, but you understand where we are coming from and understand this background. How can we—I say "we"—how can the Federal Government act responsibly without entering into some arrangement that permanently protects the assets of the fund from the trustees themselves?

Mr. LEHR. Senator, my personal observations are I don't think such protection is needed, based on what I have seen and the relationship I have seen with the trustees and the attitudes I have heard from the trustees. However, I think the consent decree itself and institutionalizing the asset concept, memorializing the asset concept, if you will, in the consent decree, writing the guidelines as to the size of the independent firms that could manage the assets, writing the guidelines to accept the language of IRS, and I feel, it is my feeling that GAO concurred in it regarding the benefits of the administration account. I think the consent decree itself addresses these questions and I think that the comfort—and obviously you and others do have discomfort—the comfort should be in the consent decree and I think the consent decree is comprehensive in nature.

Senator NUNN. The General Accounting Office has made various recommendations and I want to ask you to respond to these recommendations and give us your personal views on those as I call your attention to them.

First of all, the General Accounting Office recommends that the trustees be removed from control and influence of all moneys the fund receives, including the B. & A. account. In this respect, GAO proposes a reorganization of the way the fund handles and controls employers' contributions and its other moneys, to remove the trustees' controls over any of the funds.

Would you comment on that recommendation?

Mr. LEHR. Senator, I have found very professional administrators from the B. & A. account, I have found one of the finest financial groups of people, one of the most professional groups of people, 600 employees, of any organization I have ever walked into. I have found trustees, the statement I made here today, I will assure you they are 100 percent supportive of that statement, and they want those things, and they want them done. I showed you the return that the benefits administration account has had. I think it comes down—I say this with the greatest respect—to the question of whether the Government or outside sources are going to run this fund, or the trustees are going to run this fund with a consent decree in place.

I think that is the issue, and I think that in my opinion the trustees; with the consent decree, and with the concessions that are not felt entirely necessary, not from a substantive standpoint, but from a cooperation standpoint, those concessions are being made, are willing to be made for a comprehensive settlement.

I think it comes down to whether the trustees are going to, with the consent decree in place, run the fund or the Government is going to run the fund. I will tell you, in my opinion, for whatever that opinion is worth, the trustees have, and will do a very good job of running that fund.

Senator NUNN. On that point, the Department of Labor found evidence of past abuse of the B. & A. account such as No. 1, lack of control on rental income; No. 2, failure to manage real estate and non-real estate-related investments; No. 3, reasonableness of administrative expenses; No. 4, failure to manage fees charged to borrowers; No. 5, the propriety of payments to trustees; and No. 6, the reasonableness of payments to service providers.

I assume that includes Amalgamated.

One other for instance, in 1974, 1975, I realize that is several years back, the trustees received almost $400,000 in expenses. I do not know how many trustees there were at that time, if it was 10, that would be $40,000 apiece. So there is a serious series of findings against management of the B. & A. account.

Mr. LEHR. First of all Senator, I have taken the position not to hash and rehash the past and certainly your questions are very legitimate and are in the GAO report. I will tell you that is the 1974–75 period. I will also tell you the trustees are not compensated at this time. As I recall, they did get a daily fee at that time; there were 16 of the trustees. I think that when I came to the fund, I said I was going to look at conditions as they existed in October 1981. What I have found is very professional, very good.[1]

As to expenses, as to any payments to the trustees and all they received are expense reimbursements, as to any payments they received, we have in every way cooperated in giving that information to the Department of Labor.

I might suggest, I think, that the information in the GAO report, and I understand some of the limitations, is that they are several years old.

[At this point Senator Chiles withdrew from the hearing room.]

Senator NUNN. Mr. Lehr, will you be in charge of this B. & A. account on a day-to-day basis? Will that be part of your jurisdiction?

Mr. LEHR. Yes, sir. Within the guidelines as agreed to with the IRS and, Senator, my responsibility is with that fund. From the day I came on board, on the day-in and day-out basis, I am responsible, whether it be that or any other area of the fund, and if I have future appearances before this subcommittee you can well remind me of that.

I will administer it and I will take that responsibility and if there are problems, I will answer for those problems.

Senator NUNN. If you are asked by the trustees to do something you deem to be either imprudent or something that would be detrimental to the fund, itself, in the management sense, how will you handle that?

Mr. LEHR. I would not do it.

Senator NUNN. What if you are asked to do something unethical?

Mr. LEHR. I would not do it.

Senator NUNN. Are you familiar with the attempt by the trustees to settle a suit over property by making a $91 million loan out of the

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[1] See "additional matters" supplied by the Central States Pension Funds just prior to printing on page 303 following Mr. Lehr's prepared statement.

B. & A. account in a matter dealing with Morris Shenker? Have you read about that?

Mr. **Lehr**. I have read about it; yes.

Senator **Nunn**. Without rerunning that story, what would happen if you were asked to take a step like that in your capacity by the trustees?

Mr. **Lehr**. Senator, I think I find it very difficult to deal with fact situations that I haven't put in front of me. I haven't had all the fact situations put in front of me. A very easy answer to you at this time, Senator, would be, "Gee, I wouldn't do that." As I understand it, this is a settlement that would go before a court for approval of a court and there wouldn't be such moneys until there was approval of the court.

I think structuring of the B. & A. account, as we agreed with the IRS and the Department of Labor, would prohibit a transaction such as that.

I am what I am. My background is what it is. I will take total responsibility for anything that is put in front of me and I can give you an answer, yes, I did; no, I didn't, and the reasons I did it.

I find it very difficult to put myelf in a different time, diffferent place, different circumstances and say what I would and would not have done.

Senator **Nunn**. Without getting into specifics of that case and asking you hypothetically on that case, will you resist any effort by the trustees to require you, advise you, or force you, directly or indirectly, to take steps that would be either imprudent or unethical regarding the fund's assets?

Mr. **Lehr**. Absolutely, and I might add the trustees have never shown me anything except the most positive attitude, the most ethical attitude, and the most supportive attitude. The agreement I have with the trustees, is that I run the fund on a day-in and day-out basis, even to the point if there is a minor decision a trustee gets a call on, he refers the call to me.

The trustees have done everything they are committed to do and I could not have been more pleased with the group of men that I have in these trustees. Absolutely, I will make the decisions day in and day out and do it based on what I think is right and appropriate because that is what the trustees have told me.

Senator **Nunn**. Do you know Mr. Dan Shannon, Mr. Lehr?

Mr. **Lehr**. I do not.

Senator **Nunn**. Have you ever talked to him?

Mr. **Lehr**. No, sir.

Senator **Nunn**. Do you recognize he came into a similar position and since departed?

Mr. **Lehr**. Yes, sir.

Senator **Nunn**. I suppose you recognize that he made similar statements to what you are making now about his own role in his ability to draw the line, and so forth, and his dedication to protecting the fund?

Mr. **Lehr**. Yes, sir.

Senator **Nunn**. Do you recognize he was later terminated?

Mr. **Lehr**. I am aware of that, yes, Senator.

Senator **Nunn**. I don't in any way denigrate your good intentions and I hope you succeed.

Mr. Lehr, what is the likelihood that the fund will cover any claimed losses in civil suits now pending?

Mr. Lehr. Specifically regarding the Fitzsimmons suit, for instance. I don't know if you are referring to that specifically.

Senator Nunn. I am including that one, not limiting it to that.

Mr. Lehr. That particular suit is in what we refer to as quadrilateral negotiations. I think that is under Judge Moran and those negotiations will, or will not be resolved.

Senator, I do not know that I could put a number on it or a percentage on it. The fund will pursue what is proper and what is best economically for the bottom line of the participants and beneficiaries of the fund.

Senator Nunn. You are looking after the fund, not past trustees; is that right?

Mr. Lehr. Right, Senator.

Senator Nunn. You are not trying to protect past trustees?

Mr. Lehr. No, sir, we are not trying to protect past trustees. We are trying to avoid costly litigation that will spend four, five, six times more than could ever be spent in some cases. Finite resources which I think is Judge Moran's comments—the problem gets to be, and I am not referring to this subcommittee—I think the problem gets to be our intentions are considered the worst. The fact is I do not intend for any part of the decisionmaking process I have to spend $2½ million to collect $200,000. I just don't think that is to the benefit of the participants of that fund.

Senator Nunn. That gets to the point of who is joined in as defendants in the original suit by the Government. Of course, we have had a lot to say on that point in our past reports. I do not see any need for rehashing that again. It is obvious the Labor Department hasn't joined in the defendants, third party defendants that if there was abuse, would probably reap most of the benefits. That was a collossal governmental error.

Of course, that is not your problem, that is not your responsibility.

As I understand it, your proposed settlements with the Government would include all civil suits now pending against both present and former trustees; is that correct?

Mr. Lehr. Our proposed settlement would include settlement of the Fitzsimmons litigation.

Senator Nunn. Is that the suit against the former trustees?

Mr. Lehr. That is the suit against the former trustees. That is the suit we refer to as Walner, but that is Dutchak, Sullivan, and Fitzsimmons. That is the suit in front of Judge Moran currently.

Senator Nunn. Have you or anyone in the trustees—have you done an analysis about the assets of those former trustees and how many assets they have, how much insurance they have in order to satisfy any potential judgment in pending litigation?

Mr. Lehr. We have not done an analysis of the assets of the former trustees. We aware of the insurance recovery that is available.

Senator Nunn. Without doing an analysis of the assets through either discovery or some other means, how can you tell whether the civil suit should be settled for certain limited amounts of money?

Mr. Lehr. Senator, that is currently a question that has been raised before Judge Moran and I think Judge Moran addressed the question in regard to the question of finite resources based on the ongoing legal costs. The settlement that was reached between Walner, who was the attorney, I understand are, for the class action, the attorneys for the IBT, the attorneys for the fund, and DOL joined in, I think that question is going to be addressed in the process of quadrilateral negotiations. I obviously will live by the results of those negotiations in the court.

Senator **Nunn**. Maybe you would confer with your lawyers on this one, but can discovery be used in pending civil cases to get into the question of assets of the former trustees and how much they are awarded?

Mr. **Lehr**. That is an issue at this moment that is before Judge Moran. That is being worked on.

Senator **Nunn**. What I am curious about, though, as a former attorney is how you can make a judgment on the appropriate amount of settlement without knowing what assets and resources are potentially available from the defendants?

Mr. **Lehr**. Well, we do know what resources are available from the defendants' insurance. The settlement was predicated on those resources being made available, the insurance being made available. The insurance was the defendants' insurance.

Senator **Nunn**. Are you saying your proposal limits the amount of settlement to the confines of the insurance coverage?

Mr. **Lehr**. As the proposal is currently before Judge Moran, that is correct, Senator.

Senator **Rudman**. Would you yield——

Senator **Nunn**. One more question, Mr. Chairman.

So that the assets of the former trustees themselves would be fully protected under the provisions of your proposed settlement?

Mr. **Lehr**. That is correct, Senator.

Senator **Rudman**. Just for one question. I think it is the appropriate time to ask the question. I have hesitated to ask it only because your record before us is an excellent record and certainly you come here with a prime facie understanding of integrity. I ask this question only because I think it has to be asked.

Do you have any past association, professional or personal, with any of the past trustees or past leadership of this fund or of the union itself?

Mr. **Lehr**. I have a friendship and association for a number of years, association in the sense it is a friendship, and have had a relationship going with the president of the International Brotherhood of Teamsters, Roy Williams.

Senator **Rudman**. How about some of the past trustees?

Mr. **Lehr**. Senator, I don't recall having any association; possibly met some of them over the years. I think I can safely answer that question "No."

Senator **Rudman**. So the only association you have had has been one with Mr. Williams; is that correct?

Mr. **Lehr**. Yes, sir.

Senator **Rudman**. Has that been a professional relationship, a personal relationship, a business relationship?

Mr. **Lehr**. We have had—the banks I have been in have had some personal banking relationships with Mr. Williams.

Senator **Rudman**. Have you been Mr. Williams' personal banker over the years?

Mr. Lehr. I would not argue with that. The bank I went to in 1977, Mr. Williams' accounts were already at that bank. I wouldn't argue with that description.

Senator Rudman. How long have you known Mr. Williams?

Mr. Lehr. I imagine around the late sixties, early seventies I met Mr. Williams.

Senator Rudman. Have you ever been involved in any investments with Mr. Williams of a private nature?

Mr. Lehr. No, sir.

Senator Rudman. So your relationship could be described as professional in that you would be considered possibly his banker?

Mr. Lehr. Yes, sir.

Senator Rudman. Have you loaned him money in your affiliation with banks that you have worked for in the course of business?

Mr. Lehr. Yes, sir.

Senator Rudman. You have had a social relationship?

Mr. Lehr. Yes, sir.

Senator Rudman. Do you consider him a very close, personal friend?

Mr. Lehr. I consider Mr. Williams a close, personal friend, yes.

Senator Rudman. Let's move to the present trustees. Prior to becoming the director of this fund——

Senator Nunn. Mr. Chairman, let me ask one other question on that. On this point about the past trustees, they are part of the civil litigation that is now pending, correct?

Mr. Lehr. That is correct.

Senator Nunn. They are being sued to recover certain moneys on the basis of alleged malfeasance, and so forth, in the civil litigation; is that right? They are defendants in that?

Mr. Lehr. I understand it is negligence. It is not fraud. The suit is on negligence, as opposed to fraud.

Senator Nunn. Those moneys, if recovered, would go to the fund that you manage, correct?

Mr. Lehr. That would be correct.

Senator Nunn. And you are saying the proposed settlement limits the amount of recovery to the confines of the insurance policies?

Mr. Lehr. That is correct, Senator.

Senator Nunn. And, therefore, the former trustees' own assets or the assets of their estates would not be subject to recovery?

Mr. Lehr. As the settlement, in the form it is presented in the courts, that is correct. They are now in what we refer to as quadrilateral negotiations.

Senator Nunn. Included in those defendants would be Mr. Roy Williams, and also the estate of Mr. Fitzsimmons, correct?

Mr. Lehr. I believe that is correct.

Senator Nunn. Does it give you any pause when you are managing the fund itself, which will be the potential recipient of any recovered sum of money in a governmental suit to also be proposing a settlement which would limit the amount of that recovery and particularly limit any recovery against either Roy Williams or the estate of Mr. Fitzsimmons?

Mr. Lehr. Senator, I think, again, I go back to what is the best bottom line. In my opinion and the opinion of the attorneys that are in the process of negotiating the settlement with Mr. Walner and

Mr. Walner's opinion, evidently, who negotiated the class action, that the bottom line to the beneficiaries, that the ultimate dollars available to the beneficiaries would be best preserved by putting the litigation to bed and stop the ongoing legal costs and take the insurance that was available from the insurers, that the insurance money was available to insure these former trustees.

Senator NUNN. Part of the settlement, as I understand it, if it were accepted, would mean there would be no finding entered into against the former trustees as to any breach or violation of their fiduciary's duties, is that correct?

Mr. LEHR. Senator, I would not dispute that. I can tell you that I know that. Yes.

Senator NUNN. Without in any way suggesting any kind of legal conflict, which I do not—I want to make that absolutely clear because a legal conflict of interest is something I am not in any way alleging—it seems to me, though, you have to really do some soul searching—when I say "you," I mean the fund itself—as to whether there is a conflict in proposing and advocating a settlement that in effect limits the amount of money recovered itself and protects the assets of the former trustees?

Mr. LEHR. Senator, I think the ultimate decision on the part of the fund which gives the fund the best bottom line, what gives it the most dollars, keeps them from expending the dollars and in the opinion of the trustees, in the opinion of the counsel, in my opinion, this settlement is in those interests.

Senator NUNN. There is also an element here by letting off the hook the former trustees from any civil recovery at all, and the Labor Department by its questionable handling of the investigation has in a de facto way at least let them off the hook on any criminal matters and now we have a settlement proposal that will let them off the hook on any civil recovery, really that serves as a deterrent to both present and future trustees for negligence, malfeasance or misconduct in their fiduciary capacities. Does that give you concern?

Mr. LEHR. I think the Labor Department will have their proper role in court. It does not give me concern. I think the Labor Department is party to this and must be part to this. It is now in the hands of the court and I happen to believe the appropriate thing will be done.

Senator NUNN. Mr. Lehr, were you chosen by Roy Williams?

Mr. LEHR. No, sir, I was not.

Senator NUNN. Who made the choice of hiring you?

Mr. LEHR. The trustees.

Senator NUNN. Do you know if Mr. Williams recommended you to the trustees?

Mr. LEHR. I do not believe Mr. Williams recommended me to the trustees.

Senator NUNN. You don't think he played any role in that at all?

Mr. LEHR. I do not.

Senator RUDMAN. Senator Nunn has followed the line of questioning that I was pursuing. I want to continue it just a bit beyond that.

I wanted to ask you one last question about your banking relationship with Mr. Williams. Had you handled Teamsters' loans at any of the banks in relationship to your dealings with Mr. Williams?

Mr. LEHR. Senator, can you clarify "Teamsters loans?"

Senator **Rudman**. Loans that in any way went to that union for any purpose.

Mr. **Lehr**. Absolutely not.

Senator **Rudman**. So the loans were to him personally for whatever business purposes he had?

Mr. **Lehr**. Not only personally, but really minor in nature. I have no problems as to the propriety rates, treated like other borrowers.

Senator **Rudman**. Let me talk about the present trustees for a moment.

As I read off this list of names to you, let me simply ask if you will tell me of your knowledge, of your own personal knowledge, whether or not these people were acquaintances or friends of yours before your appointment, and also whether or not you are aware if they were friends or had personal relationship or business relationship with Mr. Williams before your appointment.

Marion Winstead?

Mr. **Lehr**. I did not know Marion Winstead before my appointment.

I want you to understand, before my appointment, or the interview process, let's say 60 days before the appointment.

Senator **Rudman**. Do you happen to know whether Marion Winstead has any relationship at all with Mr. Williams?

Mr. **Lehr**. I am sure Marion Winstead—I couldn't outline the details, but I am sure he has a long-term friendship, feels he does, with Roy Williams.

Senator **Rudman**. How about Harold Yates, same question?

Mr. **Lehr**. I met Harold Yates several months before my appointment when I was in Chicago one day and stopped by to see my friend, Jim Walsh, who is with the fund.

I met Harold Yates at that time, but did not have any long-term acquaintanceship.

Senator **Rudman**. How about the second question, as far as Yates is concerned?

Mr. **Lehr**. Again, I would assume he has had a long-time friendship with Roy Williams.

Senator **Rudman**. Earl Jennings?

Mr. **Lehr**. Earl Jennings, again, the first time I met Earl Jennings, I believe, was in August of 1981. I would again—seeing Mr. Jennings is a long-time Teamster Union official, he would have had a long-time relationship with Roy Williams.

Senator **Rudman**. Loran Robbins?

Mr. **Lehr**. I met him sometime during 1981.

I don't believe I met him prior to 1981.

My answer would be the same regarding his association and relationship with Roy Williams.

Senator **Rudman**. Robert Baker?

Mr. **Lehr**. Robert Baker, again my answer would be the same. He is a management trustee. I do not know the length of the relationship and friendship he would have had with Roy Williams.

Senator **Rudman**. Howard McDougall?

Mr. **Lehr**. Same as on Mr. Baker.

Senator **Rudman**. Thomas O'Malley?

Mr. **Lehr**. My answer would be the same as on Mr. Baker.

Senator **Rudman**. R. V. Pulliam, Sr.?

Mr. **Lehr**. Same.

Senator **Rudman**. All of these people have some affiliation, I believe, with the Teamsters Union; is that correct?

Mr. **Lehr**. The latter four names are management trustees. They have affiliation with trucking associations, as I understand it, or trucking companies and, of course, as trustees, they have an affiliation.

Senator **Rudman**. Let me ask you just one last question before yielding back to Senator Nunn and then just a comment.

Are you telling us here today that you do not think that Mr. Williams has any influence, to your knowledge, with these individuals in your selection? That is a question with no inferences to it. It is just a simple question.

Mr. **Lehr**. Senator, if you will bear with me, let me give you a brief scenario of my appointment.

Senator **Rudman**. That would be very helpful.

Mr. **Lehr**. I was in Chicago last December and Mr. Walsh, counsel at the table with me, and I went over to the fund at that time. I met a couple trustees at that meeting and I believe Mr. O'Malley and Mr. Yates. We had a brief discussion, just "Hello, how are you?", and a brief discussion. We got to talking about my background. They said something to the effect, "How would you like to be executive director?" kind of off-the-cuff comment, not taken too seriously. There followed a couple more questions along those lines over the next 2 or 3 days, and I expressed that I really didn't believe I had any interest. It became known again in May or June or July that they were looking for an executive director and would I be interested.

I talked with Mr. Walsh, I talked in some length on a couple of occasions that I am very happy where I am, compensated well, but it would be a challenge and I might be interested.

I am told that the first time Mr. Williams heard about it, that his comment was, "He must be crazy." The only thing Mr. Williams said to me was, "It was the choice of the trustees and it would be fine as far as I am concerned." I am not going to sit here and say, "Oh, my gosh"—I am very proud of my association and friendship with Roy Williams. I have no qualms about that. I am not going to sit here and tell you Senators my friendship or lack of friendship with Roy Williams did or did not have anything directly to do with it. I am convinced the trustees made the choice independent of any comments from Mr. Williams, one way or the other.

Senator **Rudman**. Mr. Lehr, nobody is questioning your background or qualifications for this position. You are obviously well qualified. That is certainly not the thrust of the question.

Let me ask you another question. After it became apparent that you were going to be retained for this position, did you have a discussion with Mr. Williams concerning the litigation in which he was a defendant and the fund a plaintiff?

Mr. **Lehr**. I never did.

Senator **Rudman**. You have never had a discussion of that type?

Mr. **Lehr**. I do not recall any such discussion.

Senator **Rudman**. I want to go back to Senator Nunn's questioning concerning the policy which you have adopted in terms of some of this litigation. If I understand the policy, the policy is to seek the limits of insurance coverage but not to go beyond that. Your rationale for that decision seems to be that to go beyond that could cost additional sums of money that would be counterproductive and not in any way have a good cost benefit. Is that an accurate statement?

Mr. LEHR. That is accurate.

Senator RUDMAN. Let me ask you this question: If, in fact, you have a multimillion dollar claim against one of these defendants and the insurance coverage is less than that claim, how can you make that kind of a decision without doing discovery to decide how much these people have in terms of net assets?

Mr. LEHR. Senator, the discovery process itself could have been rather extensive. As I understood, Judge Moran indicated something to the effect of finite resources in a hearing some months ago, some weeks ago, that the finite resources that he felt would be available. The discovery process itself would be expensive and the fact is there was insurance to cover this question. We proceeded with the insurance in the hope that it was the best bottom line and in the opinion it was the best bottom line of the participants of that fund.

Senator RUDMAN. Are you telling us—and I want to make sure I get your testimony straight—that there is sufficient insurance to cover all of the claims in the full amount of the addendums of lawsuits?

Mr. LEHR. Senators, I do not know what those numbers are. I do not know what the full amount of the lawsuit is.

Senator RUDMAN. It is our understanding, correct me if I am wrong, that the insurance available here and counsel may know this is in the area of $2 to $3 million, is that correct?

Mr. LEHR. Counsel says we shouldn't get into numbers of a sensitive nature. I tell you——

Senator RUDMAN. Fine, then you submit those for the record. Indicate you want them sealed and we will do that.

Mr. LEHR. May I add, Senator, I am not going to disagree with your number, but we will submit the details for the record.

[The information referred to was marked "Exhibit No. 30," for reference, and may be found in the confidential file of the subcommittee.]

Senator RUDMAN. That is fine. It is my understanding that the claims are somewhat in excess of that general figure; is that accurate?

Mr. LEHR. I think that is accurate, yes.

Senator RUDMAN. Then it seems the insurance is not adequate to cover the claims; is that a fair statement?

Mr. LEHR. I would say that is a fair statement.

Senator RUDMAN. Mr. Lehr, I have to join with Senator Nunn to express my very serious concern about this policy in light of what may only be friendships and acquaintanceships with people, and and other relationships.

I think there is almost fiduciary responsibility here to go after whatever assets exist, and I just think that this subcommittee wants to take you and your trustees at face value in wanting to do the right thing.

Your statement certainly gives that impression. But it certainly seems to me that there are $8 million or $10 million worth of claims and less insurance. Let me say to you as one who practiced law for many years that the discovery proceedings to determine the net worth of anything is not all that expensive.

I expect it to be very reasonable. It is a proper matter of inquiry under the jurisdiction of any proceeding in any Federal or State court that I am aware of. I hope you will reconsider that. And I yield back to Senator Nunn.

Senator NUNN. Mr. Chairman, I completely agree with that.

Again, Mr. Lehr, the background of this is, we have got several hundred pages documenting the Labor Department's errors in not pursuing culpable third parties and not pursuing any kind of criminal investigations, serious criminal investigations against the former trustees. And now we have civil litigation based on negligence, allegations of negligence.

We have rather large amounts of money being sought for the funds, meaning for the members, the rank-and-file members of the Teamsters Union. Those suits are against the former trustees and now we have a proposed settlement that will settle only for the insurance which is only a very small percentage of that total amount sought which means if the settlements were agreed to, then we would have the former trustees with no criminal serious investigation and with no civil penalty for negligence.

I am concerned not as much about the money, although that is important, as I am about the precedent and the message that sends to both the present trustees and to future trustees, not only of this union but of others.

Do you understand at least the concerns we are expressing here?

Mr. LEHR. I do understand the concerns, Senator. I may be making a very bad judgment of individuals. I think we have eight trustees at that fund at this time that want to do the proper thing, have been doing the proper thing and want to put some of this stuff behind it.

I think the motivations for that are very good and very positive, very pure. I do not necessarily say we see it in the same light. I am giving you my best judgment. I think the negotiations were brought to this point and we did—I was first briefed on this, as I recall, in mid-September. They were brought to this point and I think they were brought to this point in the negotiations with Walner, primarily, who represented Dutchak and Sullivan in class action but dealt with some of the same issues, they were done in what people felt sincerely was in the best interest of the funds.

DOL has now entered it and they will have their day and we will obviously abide by the ultimate judgment.

Senator RUDMAN. Mr. Lehr, let me just say something to you and come back to a basic point here. What we are really talking about here is that we are not really talking to you; you are here; you did not make this policy. You were not involved in running this fund.

Mr. LEHR. That is right.

Senator RUDMAN. Human nature being what it is, it is not unnatural, unexplicable, unexpectable, surprising or shocking for anyone to come to the conclusion that if it is possible to have a lawsuit and not hurt your friends that you try not to hurt your friends. That should not come as a surprise to anybody in this hearing room.

I think what Senator Nunn is saying, what I am saying is that there have been some things done here, not in the interest of the beneficiaries of this plan and no effort ought to be spared to enforce civil action and collections and judgments against those who in any way were negligent, if not for the money, to show those in the future that there is a price, and a personal one at that, to be paid.

The payment of an insurance claim will not be any kind of an inhibition in the future. I hope your trustees will reconsider that because I personally feel very strongly about it.

Mr. Lehr. Senator, let me just say never will I come before this body and any other body and I apologize and say, gee, I wasn't there then and I am not responsible.

When I took that job, I was responsible. I heard what you said today. I think it is important to point out. In our negotiations with DOL for the past 4 weeks, we discussed this very matter, we discussed the Walner settlement.

I won't specify because I don't remember who in the room said it but it was said, "We are not interested in a pound of flesh, we are not interested in a pound of flesh" from the former trustees. That was the particular quote.

In addition, DOL as late as a week ago Tuesday evening, said they would be willing to negotiate a settlement on the Fitzsimmons matter, if, in fact, we would discuss the independent trustees, and I said that was not an item we were negotiable on, the independent trustee issue.

Senator **Nunn.** You said it was an item that was nonnegotiable?

Mr. Lehr. I said it was an item from our standpoint that was nonnegotiable.

I don't think we are trying to shove this question down somebody's throat——

Senator **Rudman.** I think you now know there is a third viewpoint.

Mr. Lehr. I think I heard loud and clear, Senator.

Senator **Nunn.** The viewpoint of this subcommittee and the viewpoint of DOL does not always coincide.

Mr. Lehr. I have read that, Senator.

Senator **Rudman.** To put it mildly.

Mr. Lehr. One other thing. What we are talking about here is a compromise. We don't know what the final outcome of the suit will be. We don't know what the final dollars will be. If we continue to litigate, I think it could be much more costly to participants in the fund.

I can say that without any regard to friendships or anything else. I think this compromise is to the ultimate benefit of the trustees. I will tell you this, I——

Senator **Nunn.** I know it is to the benefit of the trustees. What I am worried about is the rank and file.

Mr. Lehr. That was a Freudian slip.

Senator **Nunn.** Mr. Lehr, we understand the Teamsters fund and Department of Labor were working toward a comprehensive settlement and that settlement would entail sweeping equitable relief for the fund in some sort of settlement of outstanding lawsuits which we just discussed.

We also understand which you said today that those negotiations have broken off.

Do you see the possibility of reentering those negotiations and if so, do you see the possibility of a comprehensive settlement?

Mr. Lehr. I do.

Senator, before I make this next statement, I would say, had I been sitting at the Department of Labor, I might well have taken the same view. I asked when I came in as executive director, I went up to Mr. Ryan, who we have had a very good relationship, open relationship with, and I said I want to get acquainted with the issues. I want to meet in late October—this was late August, early September—I would like to meet in late October to continue because I am going to be the chief negotiator and I would like some time.

He said we will do the best we can to give you as much time as possible. At 11 o'clock Chicago time, midnight Washington time one night around the 5th of October, and I can get the exact date, I got a call from Mr. Feldman. He said we must start negotiations immediately. You have to be in before the 13th and 14th because the Secretary has been called before the Senate subcommittee.

Again, if I were in the Secretary's position, I might well have taken the same position. We have been negotiating against the date of the 28th of October. I don't know that that is realistic. I think we needed more time. I am not blaming the subcommittee, I am not blaming the Department of Labor. I think when these hearings conclude, we will get back into meaningful negotiations.

Senator **Nunn**. You really think these hearings had something to do with the breaking off of negotiations?

Mr. **Lehr**. I do, Senator.

Senator **Nunn**. You recognize——

Mr. **Lehr**. I am not blaming the hearings. I am saying it as a fact of life.

Senator **Nunn**. You recognize we were not a party to the negotiations and knew nothing about it.

Mr. **Lehr**. I understand that. I am not saying it is bad the negotiations were broken off. Maybe they would have been for other reasons. I am not criticizing DOL. Had I been there and aware of the Senate subcommittee reports, I might well have had the same attitude. I think the timing was a factor. I think we have very good lines of communication open to DOL and hope these negotiations continue.

Senator **Nunn**. You understand this subcommittee never communicated with the Department of Labor or anyone else in setting some kind of deadline. We were not aware of the negotiations and not briefed on them before these hearings.

Mr. **Lehr**. That is what I was told by your counsel.

Senator **Rudman**. We are going to stand in recess for about 10 or 12 minutes while Senator Nunn and I go over to the Capitol to vote; then we will be back and reconvene.

[Brief recess. Members of the subcommittee present at the time of recess: Senators Rudman and Nunn.]

[Members present after the taking of a brief recess at 12:14: Senators Rudman and Nunn.]

Senator **Rudman**. The subcommittee will be in order.

Senator Nunn?

Senator **Nunn**. Mr. Lehr, one of the recommendations of the General Accounting Office makes and you alluded to a minute ago, is that the Government get involved in the selection of new trustees to insure either neutral trustees or a selection process which is likely to produce trustees with good qualifications and high integrity.

What is your comment on this recommendation?

Mr. **Lehr**. Senator, first of all, I think we have good trustees with good qualifications and high integrity. I think that as my reading of this subcommittee's report was that you gave the independent trust, that you suggested independent trustees as one vehicle to, one possibility for the, let's say, for lack of a better term, "monitoring process."

The consent decree, as I read your recommendations, was the preferable vehicle for that monitoring control.

These trustees will enter into a consent decree. I will not tell you these trustees feel the necessity from the standpoint that they should be monitored but I think it is important from a concept standpoint and a comfort standpoint. These trustees would find it unacceptable to have independent trustees or to have the Government doing the selecting of trustees and I think again, this is not, should not be taken in an adversarial tone. I think the point comes sometime that either the independent industry, the union, and the trustees are going to have to run that fund or the Government is going to have to run that fund.

I think that what I have found in my association with the trustees has been very good and very professional, I consider them, everything I have seen and I have got to take things as I see them, I couldn't have had a better and more supportive association.

The question of the independent trustees we have told the Department of Labor and I have seen them quoted on that and they are absolutely accurate in their quotes that we consider that a nonnegotiable issue.

We think the consent decree addresses the question and we think the consent decree addresses your subcommittee's report. We think that having independent trustees would be like in effect consent decree having the—being under the direction of the court and then babysitters are put in on top of that.

It comes to a point that sometime these trustees will have to stand up for their responsibilities and authority to run the pension fund even in connection with the consent decree and we feel that is adequate.

Senator **Nunn**. How are the trustees selected?

Mr. **Lehr**. Senator, I have at the request of your counsel and I will be glad to go through this—we have prepared yesterday a detailed selection process for the various trustees and let me go through it rather hurriedly and we will supply you with it.

Article 2, section 2 of the trust agreement provides as follows:

That there is hereby created a board of trustees consisting of four persons representing the employers, four representing employees.

The employer trustees shall be designated as follows:

One, trustees shall be designated by each of the following employer groups, act either alone or jointly as herein indicated. A southeastern area motor carriers labor relations association and southwest operators association, (B), Cleveland Association, Inc., Northeastern Ohio Motor Truck Association, Carthage Employees Management Association; two, trustees shall be designated from the following employer groups. That is C.

Motor Carriers, Employers Conference, Central States. These are basically trucking associations of various trucklines.

The employee trustees shall be designated by the union as defined in article 1, section 2, of this agreement.

Article 1, section 2, the term "union" as used herein shall mean the Central Conference of Teamsters, the Southern Conference of Teamsters, and their affected affiliated local unions and such other unions as the trustees shall agree upon.

The entity which appoints the trustees shall exercise their appointing power through the respective board of directors, except the Motor Carriers, Employers Conference, Central States, which provides for the appointment power to be exercised through the chairman of the conference, the employee trustees are appointed by joint action of the respective policy committees of the Central Conference of Teamsters and the Southern Conference of Teamsters.

Policy committees consisting of seven individuals, elected by conference delegates, are the governing bodies of the respective conferences similar to a corporate board. At the present time, the general president of the International Brotherhood of Teamsters is chairman of the policy committee of the Central Conference.

Copies of the trust agreement, bylaws of the Central Conference of Teamsters, and bylaws of the Southern Conference are submitted herewith.

Article 2, section 6, of the trust agreement provides following through removal of trustees. Any employer trustee may be removed with or without cause——

Senator **Nunn**. Can you put that in the record?

Mr. **Lehr**. Yes.

[The document referred to was marked "Exhibit No. 31," for reference and remain in the files of the subcommittee.]

Senator **Nunn**. There was one provision there about who made the selection.

Could you reread that, the employee trustees?

What committee is that that makes that?

Mr. **Lehr**. It is the policy committee.

As I recall, three of them come from the Central Conference, one from the Southern Conference, and the policy committee from each of those conferences make the selection. There are seven members on each policy committee.

In connection with the Central Conference, chairman of the policy committee is Roy Williams, who is the president of the IBT, also is general president of the IBT.

For the Southern Conference, I think Joe Morgan would be chairman of the policy committee.

Senator **Nunn**. Roy Williams is the chairman of the committee that selects the trustees to the Central Conference.

Mr. **Lehr**. One of the two, selects three of the trustees. That is right.

Senator **Nunn**. He is also one of the former trustees who was required to resign and is now being sued by the Labor Department?

Mr. **Lehr**. It is my understanding, Senator. We will submit this.

Senator **Nunn**. He is also under indictment. Is that correct?

Mr. **Lehr**. That is my understanding, Senator.

Senator **Nunn**. You understand where we are coming from and where the Labor Department is coming from in wanting independent selection of trustees?

Mr. **Lehr**. I understand the question, Senator. And I understand the concerns. I hope you understand our position.

Senator **Nunn**. Is there a way in the proposed consent decree to insure that the trustees, even if not independently selected—in other words, if your position is upheld, in the formal agreement, final agreement, is there a way to insure in the consent decree that the trustees will be limited in the management of the assets so that the dangers of past abuses can be severely limited?

Mr. **Lehr**. Senator, I feel that that question is addressed and, again, I find what is a rather sound asset base. But I think that condition is certainly addressed and I think that becomes one of the prime purposes for the trustees saying we want to show you what our intent is. Even though we don't feel it necessary, we want to show you. I think when we address the question of the selection of independent managers and even willing to accept the guidelines and specifications of DOH, when we sit here and say we are willing to enter into a 5-year agreement as opposed to nothing, something with a 6-month cancellation clause with Equitable, while we sit here and say we are willing to enter into a 10-year consent decree, when we sit here and outline what we are willing to do on litigation defense policy, what we are willing to do on the B. & A. account, what we are willing to do on these other matters, I don't think that, I think those protections are all built in.

I think they are built in for the reasons, the concerns that have been expressed by the subcommittee.

Senator **Nunn**. Turning to the actuarial soundness of the fund, and I don't want to get into a great deal here because it is a very complex area and I think it is going to have to be studied more than it has been, but we heard testimony yesterday from the General Accounting Office that the Central States Fund assets are about $2.8 billion.

This is based on, I think, the 1979 study. Is that in the ball park?

Mr. **Lehr**. Based on the—Senator, if you will, it will take less than 3 or 4 minutes. We have a report from our actuaries addressing the GAO report that I would like to submit and I would like to read a few parts of it into the record, because I think it is very important and there were numerous, a great deal of media interest in it earlier.

Today, the asset base is about $3.5 billion. At the time of the report, the figures used by GAO were in fact out of our actuarial report and I wouldn't argue with those figures.

Senator **Nunn**. What are the unfunded liabilities?

I will give you a chance to present that in just a moment.

What are the unfunded liabilities today?

Mr. **Lehr**. The last report we have is, this letter will show, is January 1, 1980, December 31, 1979, January 1, 1980, which was a year later—I am sorry, December 31, 1980—December 31, 1979, the unfunded liabilities vested and unvested both have been reduced to approximately $6 billion; $6.05 billion as of January 1, 1980, which was about a $1.6 billion reduction.

It was a greatly improved situation and I think the actuarial report addresses those questions.

Senator **Nunn**. Is what you have there as opposed to reading in the record an actuarial report or a letter from an actuary?

Mr. **Lehr**. It is a letter from our actuary which we asked to respond to the GAO report and the discussions and allegations, if you will, in the GAO report.

Senator **Nunn**. What is that letter based on?

Mr. **Lehr**. It is based on our, based on the work—the GAO report, the one they were working with as of December 31, 1979, and I am not being critical of the GAO.

That is what they had available when they were doing their work. This letter is based on December 31, 1979, and includes any other available updated information.

Senator **Nunn**. So this letter is updated and this letter is based on facts and figures that the GAO did not have access to at the time they made their report?

Mr. **Lehr**. That is right, Senator.

Senator **Nunn**. Why don't you go ahead?

Mr. **Lehr**. I will very hurriedly get this into the record. It is addressed to me, it is from McGinn of Dan McGinn & Associates who has a very large clientele in the actuarial business and a very good reputation attached to his credentials.

> You have asked me to assist you in preparing for your testimony before the Permanent Subcommittee on Investigations for the Committee on Governmental Affairs of the U.S. Senate.
>
> I have reviewed the actuarial section of the draft GAO Report on the Central States, Southeast and Southwest Areas Pension Fund and certain questions which you raised regarding the fund's actuarial status and eligibility rules.
>
> Comments on the GAO report:
>
> Some of the most significant comments made in the GAO report are under the label "Latest Actuarial Report Shows the Fund's Soundness is Conditional."

In that section—and we have a copy of this if you would like it.

Did they get copies?

We will bring copies.

Do you have copies of this?

> In that section based on information excerpted from our January 1, 1979 actuarial report, it states that the total accrued unfunded liability as of January 1, 1979, was $ 7.6 billion and that the amortization period for funding that liability would be about 38 years in 1981 when ERISA's funding standards would apply to the Plan. That section of the GAO report also quotes from our report the following: "If actual experience follows a pattern which is substantially different from our assumptions, the Plan could have funding problems after ERISA's standards apply."
>
> January 1, 1980 Actuarial Report: Reduction in Unfunded Actuarial Liability to $6.05 Billion:
>
> In our April 3, 1981 report, we have determined that the Fund's unfunded actuarial liability as of January 1, 1980 was $6.5 billion and that liability would be amortized over a period of approximately 27 years.
>
> This reduction in the unfunded actuarial liability is a byproduct of favorable investment experience of the Fund since the previous valuation and the changes in actuarial assumptions which we made to align our assumptions more closely with actual experience.
>
> Even without any changes in actuarial assumptions, there would have been a significant reduction in the fund's unfunded actuarial liability and in the amortization period—reflecting net experience gains for the year.

By the way, this report is not something that has come up in the last 48 hours. This report was issued in March 1981; to us.

This is a summary of it.

Plan would have satisfied ERISA's funding standards on January 1, 1980.

A principal section of the GAO report relates to the funding standards of ERISA and points out that unfunded actuarial liabilities and actuarial gains or losses must be amortized over specified periods.

For this Fund, ERISA's funding standards first apply in 1981 and the allowable amortization period is 40 years. Liabilities created by future benefit improvements must be amortized over 30 years. According to the actuarial results developed in our January 1, 1980 report, the amortization period for the fund's unfunded liability was 27 years, significantly shorter than the allowable 40-year period if ERISA's funding standards had applied. This fact demonstrates that the fund on that date would have more than satisfied ERISA's minimum funding standards.

The GAO report also refers to the fund needing a $37 weekly contribution rate to maintain the maximum monthly pension of $550. This $37 contribution rate requirement was a rate agreed upon by our firm and the Wyatt Co. As a result of our joint recommendation, the trustees, in fact, established a contribution rate increase from $31 to $37 weekly to maintain the $550 benefit.

Comments on numerous questions raised concerning the plan's provisions, its general funding status, benefit levels, et cetera:

As regards the actuarial status of the plan, in my opinion, the single most important index for evaluating a plan's funding posture is the amortization period which applies to the unfunded actuarial liabilities.

As of January 1, 1980, the fund's amortization period was 27 years, and I believe that period is reasonable and comparable with the amortization periods of many other multiemployer pension plans.

As stated previously, the 27 year period is well within the limits allowed under ERISA's funding standards. In addition to these technical comments, a review of the fund's recent financial experience illustrates a continuing favorable pattern.

For instance, the contributions and investment income have exceeded benefits and expenses very substantially in recent years, and the fund assets have grown significantly. These facts point to a soundly funded plan.

No emphasis intended.

You asked me to give you an opinion regarding the level of benefits and the Fund's rules governing eligibility for benefits when benefit levels and rules are compared with other funds.

Benefit levels are relatively high and eligibility rules are liberal:

This has been an ongoing criticism of Central States and gentlemen, it is just not true that we have low benefits and observing these rules. It is just opposite.

This has been an ongoing criticism of Central States and gentlemen, it is just not true that we have low benefits and observing these rules. It is just opposite.

One of the specific questions you have raised related to the level of benefits and the rules of eligibility for benefits under the fund. You have asked whether or not the benefits are high or low and the eligibility rules strict or liberal.

In my opinion, based on over 20 years of serving multiemployer pension plans, the benefit levels currently provided by your fund must be considered relatively high and the rules for eligibility quite liberal.

For instance, a preponderance of major plans have the same vesting provisions as your plan; i.e., 10 years of unbroken active participation allows an employee to become 100-percent vested in his earned benefit credits.

However, your plan has a feature which is distincitly more liberal than most plans of which I am knowledgeable. That feature is the requirement of only 20 years of total credited service and attainment of age 50 for an individual to receive a maximum pension benefit at age 60.

Also, there is a special provisions in your plan which, in my opinion, would be found in very few multiemployer plans. This provisions allows an individual who has forfeited his benefits because of a permanent break in service to earn back those forfeited benefits if he returns to covered employment.

You and your staff have prepared a comparison of benefits—

And we have that gentlemen, if you would like it—

benefits, assets, liabilities and amortization periods of your fund with various large collective bargaining plans.

A review of the data collected by you and your staff indicates to me that your plan compares favorably with other programs. You have indicated that questions have been raised concerning whether or not the trust rules have been unduly restrictive with respect to granting retirement benefits.

A review of the records of the trust indicated that about 100,000 individuals are receiving benefits from the plan and as of January 1, 1980, the rate of benefit payments amounted to over $28 million a month.

I believe it is an unquestionable fact that this fund is paying more benefits to pensioners than any other multiemployer pension plan.

Plan change effective April, 1979, based on actuary's recommendations:

Senator **Nunn**. Could you put the rest of that in the record?

Mr. **Lehr**. Certainly.

Senator **Nunn**. I have read all of it. I got it earlier today. We will have to have General Accounting Office take a look at that, examine it, of course. We haven't had a chance to have actuaries take a look at it.

Mr. **Lehr**. I might add we would welcome the General Accounting Office and we will cooperate and ask our actuaries to cooperate in in every way possible because we think it is important that there is a comfortable feeling with this actuarial——

Senator **Nunn**. I agree with you on that. We certainly will ask them to do that.

Yesterday we were establishing—this information is about 2 years older than your information, so yours is more updated—but we established that the Western Conference had assets at the time of $2.7 billion, Central States, $2.8 billion, the unfunded liability of the Western Conference was $2.8, and the Central States was $7.6, the amortization period which your people say is very important, at that time, was 29.6 years on the Western Conference and 39 years on the Central State Conference.

It appears that since this report was made, you may have significant improvement in the situation with regard to Central States Fund, have you not?

Mr. **Lehr**. Yes, sir. I have some updated figures, it would just take 1 second, between Central States and the Western Conference. As of January 1, 1980, and the actuary does both, begin with both conferences. The planned benefits assets as of January 1, 1980, $2.4 billion, and the Central Conference, $2.7 billion, and the Western Conference, unfunded liabilities $6 billion, $6.05 billion, and the Central, $3.28 billion in the Western. Unfunded vested liabilities, $3.5 billion in Central, $1.5 billion in the Western. Funding period, and which had been 29 to 39 years, I believe, Senator, as of January 1. 1980, was 27 and 27. It was even.

We think that is very important. Prior year benefits paid in total dollars, $349 million from Central States, $254 million from the Western Conference, and the figure we consider—the two figures we consider most significant are the total benefits paid, which we paid all, $95 million more and the second figure we consider very significant is the average monthly benefit paid by the Central Conference, $306, the average monthly benefit paid by the Western Conference is $239, and we have other plans here to compare this with, including the boilermakers, electricians.

Senator **Nunn**. We would like to have that for the record so we can examine it.

[The information to be supplied follows:]

PENSION PLAN COMPARISONS

[As of Jan. 1, 1980, or most recent plan year for which information is available]

Fund name	Plan benefit assets (millions)	Unfunded liabilities (millions)	Unfunded vested liabilities (millions)	Assumed actuarial rate of return (percent)	Funding period (years)	Prior year benefits paid (millions)	Average monthly benefit
Central States (Jan. 1, 1980)	$2,432.0	$6,046.0	$3,576	8.5–6.5	27	$349.0	$306
Western Conference of Teamsters (Jan. 1, 1980)	2,699.0	3,287.0	1,562	8.5–6.5	27	254.0	215
Boiler Makers and Blacksmiths of K.C. (Jan. 1, 1979)	557.5	440.3	(1)	5.0	23	23.5	173
National Electrical Benefit Fund of the National Employees Benefit Board for the Electrical Contracting Industry (Jan. 1, 1979)	693.7	(2)	1,010	5.5	(1)	37.3	121
Cotton Garment and Allied Industries (Jan. 1, 1979)	164.0	283.4	156	5.5	(1)	23.8	93
American Motors (UAW) (July 1, 1978)	61.9	221.7	129	6.0	(1)	17.4	222
United Mine Workers of America 1974 Pension Plan (June 30, 1979)	703.0	2,352.4	(1)	5.5	(1)	56.9	515
United Mine Workers of America 1950 Pension Plan (June 30, 1979)	68.0	2,280.0	(1)	5.5	(1)	252.5	279

[1] Not available.

[2] Not applicable under cost method in use.

Senator Nunn. Does it strike you that this dramatic improvement has come at a time when the assets were being managed by people independent of the trustees?

Mr. Lehr. I think the trustees have played a very important role in this fund, and I don't want to downplay their role in any way. I think the equitable relationship has been excellent. That is the reason we want to continue it.

Senator Nunn. You have made dramatic improvement in the last 2 or 3 years?

Mr. Lehr. No question about it.

Senator Nunn. As you know, Mr. Lehr, I don't know whether you said it or not in detail, but I know the staff talked to you about it briefly and indicated to you we would be asking questions on this subject.

I have introduced, and Senator Rudman and Senator Chiles and I have introduced together the so-called Labor-Management Racketeering Act of 1981 which calls for the removal of union officers and trustees immediately upon conviction with the provision that if the conviction is reversed at a later date, that the office would be protected.

Have you had a chance to take a look at that?

Mr. Lehr. I am generally acquainted with it

Senator Nunn. What is your personal view on it?

Mr. Lehr. We will be supportive of that. If it is the law we can certainly live by it. We have no problem.

Senator Nunn. Who are you speaking for in that respect?

Mr. Lehr. I am speaking for myself and I really have no qualms. It has been discussed with the trustees. They say they will do nothing to oppose it, and they will certainly live with it.

Senator Nunn. I find that very encouraging also.

We will be taking that up in terms of legislation sometime later this year. If we do have the support of the Teamsters Union on this, I think it would make an awful lot of difference as to whether it receives speedy passage or not. I think if it does pass, it will give a great deal of assurance that people who have been actually convicted of felonies will not be in charge of the positions of trust or fiduciary relationship.

Mr. LEHR. I want to make one thing—and I do not believe—I am not speaking for the Teamsters Union. I am speaking for the Central States.

Senator NUNN. I understand that. But I also understand that the trustees probably have some relationship with the union itself.

Mr. LEHR. I concur.

Senator NUNN. Mr. Lehr, as we understand it, a substantial number, about 50 percent of the alleged improper loans went into the hands of a relatively few people and, of course, this was before your stewardship, people such as Allen Glick, Alvin Malnik, and Morris Shenker. Does the fund intend to seek recovery from any of these potentially cupable third parties?

Mr. LEHR. Senator, after discussions with your counsel, day before yesterday, we prepared a several-page analysis of the entire relationship with those three individuals. I will present it to you at this time. I will read it for the record. I will do whatever you deem appropriate. But I am told it is a complete analysis on all transactions with those individuals, what the current status or past status of litigation is and what the further intent is.

Senator NUNN. That would be very helpful. How long is that?

Mr. LEHR. Just a minute. Twelve pages, I am told. Do you want us to bring it up and have you look at it and decide if you want it read?

Senator NUNN. If you don't mind. We appreciate you preparing that.

Senator RUDMAN. While Senator Nunn is looking at that, I wonder if for the record you would identify the gentlemen sitting on your left and right and their association with your fund?

Mr. LEHR. Certainly.

On my left, your right, is Mr. Jim Walsh, who is from Kansas City and is general counsel for the Central States. On my right is Mr. Thomas Guilfoil of the Guilfoil Symington firm in St Louis, a longtime friend and personal counsel and has done certain work in negotiations recently for the fund, including the Amalgamated memorandum of understanding.

Senator RUDMAN. Is it my understanding that the general counsel is employed by the fund itself or is it within an independent lawfirm?

Mr. LEHR. The general counsel, Mr. Walsh's functions as general counsel, he is independent, he is not on the payroll of the fund He is with a law firm, yes.

Senator NUNN. I have not had a chance to study this in detail, but it is obvious that all of these loans that I see, the original date of the loan was in 1975 or before; is that right?

Mr. LEHR. I am sure that is right.

I read it last night. We finished it rather late yesterday evening. I am certain that is right.

Senator **Nunn**. Are any of these loans in default or in litigation now? I am sure it is probably in there.

Mr. **Lehr**. It specifies in there.

Senator **Nunn**. That is in here whether or not it is.

Mr. **Lehr**. Yes.

Senator **Nunn**. Do you have any kind of present pending loans or present negotiations for loans with Mr. Allen Glick?

Mr. **Lehr**. We do not.

Senator **Nunn**. With Mr. Alvin Malnik?

Mr. **Lehr**. We do not.

Senator **Nunn**. Mr. Morris Shenker?

Mr. **Lehr**. We do not.

Senator **Nunn**. Are any of these loans second and third mortgages or all of them first mortgages; do you know?

Mr. **Lehr**. My impression from a quick reading last night is that they are all first mortgages.

Senator **Nunn**. Is the pension fund in the business of making second mortgage loans?

Mr. **Lehr**. The pension fund has not been in the business of making real estate loans since prior to 1977. Any real estate transactions whatsoever since that time have been done by Equitable and/or Palmieri.

The answer to your question is the pension fund in not in that business.

Senator **Nunn**. Mr. Lehr, the fund has a long history af affiliation, business transactions, relationships in general with organized crime figures and their associates. What is being done in the future and what do you intend to do in the future to protect the fund, and members of the fund, the beneficiaries of the fund from this kind of affiliation, both in terms of business relationships and in terms of overall image of the fund.

Mr. **Lehr**. Senator, I think that my prepared statement dealt with how I view the thing today, and what we are doing, what we are willing to do. I find the difficulty, I guess, to answer your question in some ways. My answer to your question is I came here in October of 1981. I am not holier than thou.

I am not; I am what I am. I am no more and I am no less. I will deal with the situations as they come about each and everyday. And I will assure you that to the best of my ability and as executive director, and I have that daily responsibility, there will be no transactions or individuals, and individuals trying to create transactions which are improper from any walk of life will be reported appropriately to the appropriate agencies.

I must find what I deal with and what I find is a strong asset base, good trustees, good return on the fund, a fine relationship with Equitable and Palmieri, excellent management of B & A account, the health and welfare assets and I have got to deal with what I see.

I think I have read a great deal of material on the years and I stepped up my reading of that material in recent months and I am aware of the allegations.

I must deal with what I find on a day in and a day out basis. I have got that responsibility. And if I fail in that responsibility, I am sure that this subcommittee and others would hold me responsible. I don't intend to fail.

Senator **Nunn**. I find that very encouraging. I would just ask you one other question on that point.

If you get down to the point of either resigning your position or being forced to yield to pressures you feel to be improper, which will your choice be?

Mr. **Lehr**. I would resign my position at the bank. I would do that or I would do that in any other association I had. Integrity of an individual in any situation really is about the only thing they have got. I would resign my position here, I would resign positions at the bank or anything else if I were asked to make decisions that I thought to be improper.

Senator **Nunn**. A couple of other questions, Mr. Lehr.

Has the fund paid any money for legal fees of individual trustees and officers charged with fiduciary violations?

Mr. **Lehr**. Yes.

Senator **Nunn**. Present trustees, are you paying the litigation costs against present trustees?

Mr. **Lehr**. Yes.

Senator **Nunn**. How about former trustees?

Mr. **Lehr**. It is a mix of insurance and fund payments. The information has been provided on a continuing basis to the Department of Labor and has been discussed with the Department of Labor. But we have litigation defense cost policy which based on the discussions we had with DOL, I had the impression they found that policy acceptable and all such payments have been made in connection with that policy. We will be glad to——

Senator **Nunn**. Would you submit that for the record, both your policy and the record as to what fees have been paid and are being paid?

Mr. **Lehr**. Certainly.

[The material referred to was marked as "Exhibit No. 32," for reference and may be found in the files of the subcommittee.]

Senator **Nunn**. Does the fund intend to indemnify the former trustees who have been charged with breach of fiduciary trust in the event they incur any civil verdict against them?

Mr. **Lehr**. Absolutely not.

Senator **Nunn**. You are not going to indemnify?

Mr. **Lehr**. No, sir.

Senator **Rudman**. Senator Chiles, do you have any questions?

Senator **Chiles**. I think most of my questions have been covered, Mr. Chairman.

Senator **Nunn**. Mr. Chairman, I have skipped a few detailed questions that I think can be supplied for the record and we would like your cooperation in that, Mr. Lehr. We will send it to you.

Senator **Rudman**. Let me simply conclude by reminding you that we would like a rather complete analysis of your position in *Donovan* v. *Nellis* and we intend to communicate with a variety of people to get information on that. Second, you made a very interesting comment during your discussion of your relationship with Mr. Williams. You said that when he learned that you were interested in the job, I think the quote was that he said, "He must be crazy." Obviously, that remark indicates that Mr. Williams is very aware of the history of this fund and the fact that with all of your background and good intentions, there is a great deal of doubt in the minds of many people as to how this fund will run.

Thus, I hope that you will recognize that some of the things that have been said here today, certainly in the area of apparent perceived conflict of interests in terms of some of the settlements you are talking about, are things I think you ought to take a long hard look at. I think that is very important that you look at that policy.

Mr. **Lehr**. Senator, I will by the very fact that we were asked to appear here today. I am very interested in the input and I appreciate the input I got. I think Mr. Williams' comments indicated that this would be a high visibility, high risk in many ways, there would be a lot of people swinging at us. I think that I am what I am no more. You see what you see here. I heard what you said today. We will proceed in what we think is the best interests of the participants of this fund on this and each other matter. We will cooperate with this subcommittee in every way possible. I will be glad to come back here on a voluntary basis anytime you deem appropriate.

I will be glad to talk with your staff and work with your staff anytime it is appropriate. I think this is very necessary too. I happen to think this fund has very good substance, has very good people and I think we have got some image problems and I think the format here today and future formats is the best way to improve those policies.

Senator **Rudman**. We appreciate your coming here today and the frankness and candor of your testimony. We had hoped today to conclude the hearings with the Commissioner of Internal Revenue Service. We have run out of time. That has been rescheduled to room 1202 of the Dirksen Building at 9:30 on Monday, November 2, and the Permanent Subcommittee on Investigations will stand in recess. Do you have a comment?

Senator **Nunn**. Thank you, Mr. Chairman. I regret the IRS people would not be able to put on today. But we will hear from them on Monday. Mr. Lehr, we want to thank you, from the minority point of view and I think I speak for the majority also on this, for your cooperation, during the preparation of these hearings. You have cooperated in every way we have asked. We find that refreshing and we find it hopeful.

I also want to reiterate that even though we have a lot of questions, still outstanding, as you can well appreciate, as questions indicated I do think that you have made substantial progress today and I think we have had some breakthroughs that at least give me hope that this fund that has been under fire for a long time can indeed clean itself up.

Mr. **Lehr**. I appreciate your comments, Senator. Thank you very much.

Senator **Rudman**. The subcommittee will stand in recess.

[Members of the subcommittee present at the time of recess, Senators Nunn, Chiles, and Rudman.]

[Whereupon, at 12:50 p.m. the subcommittee was recessed, to reconvene at 9:30 a.m., Monday, November 2, 1981.]

GOVERNMENT'S ABILITY TO COMBAT LABOR MANAGEMENT RACKETEERING

MONDAY, NOVEMBER 2, 1981

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:35 a.m., pursuant to recess, in room 1202, Dirksen Senate Office Building, Hon. Warren B. Rudman, presiding.

Members of the subcommittee present: Senator Warren B. Rudman, Republican, New Hampshire; and Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Michael C. Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; and Mary Robertson, assistant chief clerk.

[Members of the subcommittee present at commencement of hearing: Senators Rudman and Nunn.]

Senator NUNN. Mr. Commissioner, we are delighted to have you here this morning.

Before Senator Rudman, as chairman, starts off, let me say we appreciate your patience in sitting through those hearings the other day. We regret we were not able to hear you on that day but we appreciate your coming back this morning.

Senator RUDMAN. I would just like to echo Senator Nunn's comments, Mr. Commissioner. We are very sorry that we had to inconvenience you in that way, but those hearings just did extend beyond what we thought they would. I understand you have a time problem this morning. If you would like to proceed with your statement, either in summary or completely, it will be incorporated into the record. You may proceed.

Commissioner EGGER. I have a very brief——

Senator RUDMAN. I believe we are going to swear everybody in this morning.

Anybody who is going to testify this morning, please rise and raise your right hand.

Do you swear the testimony you are about to give in the course of this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Commissioner EGGER. I do.

Mr. WINBORNE. I do.

Mr. COHEN. I do.

Mr. BERGHERM. I do.

Senator RUDMAN. Please identify yourself and state your position for the record, please.

TESTIMONY OF ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE; ACCOMPANIED BY S. ALLEN WINBORNE, ASSISTANT COMMISSIONER (EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS) INTERNAL REVENUE SERVICE; IRA COHEN, DIRECTOR, ACTUARIAL DIVISION, INTERNAL REVENUE SERVICE; DONALD BERGHERM, DIRECTOR, CHICAGO DISTRICT OFFICE AND JOEL GERBER, DEPUTY CHIEF COUNSEL FOR LITIGATION

Commissioner EGGER. I am Roscoe L. Egger, Jr., Commissioner of Internal Revenue.

I have a brief opening statement here this morning, mainly to spell out my policies with respect to the Internal Revenue Service and the fund.

I am pleased to appear before you today to discuss the problems inherent in the investigation of multiemployer pension plans such as the Central States Pension Fund under the Employee Retirement Income Security Act of 1974, commonly known as ERISA.

Appearing with me are S. Allen Winborne, on my left, Assistant Commissioner, Employee Plans and Exempt Organizations; Ira Cohen, next to him, Director of the Actuarial Division of our National Office; Donald Bergherm, who is Director of our Chicago District Office; and on my right is Joel Gerber, Deputy Chief Counsel for Litigation.

The compliance with ERISA minimum standards by multiemployer pension plans such as the Central States Fund is a continuing concern of the Internal Revenue Service. Multiemployer plans include some of the largest in the entire country in terms of both the assets of the plans and the number of participating employees.

For example, the Central States Fund currently has approximately $3 billion in assets and a half million participants.

On March 5 of this year, the Secretaries of the Treasury and Labor Departments and the Attorney General organized a litigation strategy task force to coordinate the activities of their respective Departments in the case of the Central States Fund. This task force will be used to further assure that consistent actions are taken by the different agencies in this case and that the most effective remedies are utilized to correct violations of Federal standards.

Secretary Regan has designated Mr. Winborne as the Treasury Department's representative on the task force. As Assistant Commissioner, Employee Plans and Exempt Organizations, Mr. Winborne is responsible for the Service's overall enforcement policy regarding tax-exempt entities, including multiemployer pension plans. As District Director, Mr. Bergherm has the responsibility for determining specific actions to be taken in the case of the Central States Fund.

I want to assure the subcommittee of my commitment to the protection of the interests of the employees participating in the Central States Fund. The Service remains fully committed to enforcing the provisions of ERISA that are within its area of responsibility.

I also want to indicate my confidence in the work that high-level officials of the Service have been doing in regard to this case. I have every confidence in the decisions made by those officials in this case. Finally, I want to assure this subcommittee that the Service will coordinate its work on this matter with the Department of Labor and Justice, as reflected by our participation in the litigation strategy task force.

I would like to note that negotiations between the Service and the fund are in the final stages and it would be inappropriate for us to discuss any of the details here.

And then, Mr. Chairman, you should know, since this hearing the fund managers have provided us with a waiver permitting our officials here to answer fully and completely questions which might otherwise have been proscribed because of the Privacy Act provisions.

We believe this is a very positive sign and we look forward to being able to respond more fully to your questions than we could have done without that waiver.

In addition, I should mention that we will still be precluded from speculating as to what we might or might not do in the future. However, the officials up here that will be discussing these other points and answering your questions later will be as fully responsive as they could possibly be.

Now, with your permission, I would like Mr. Winborne to bring you up to date on recent actions by the Service concerning the Central States Funds and on general procedures formulated by the Service, and the Labor Department with regard to this kind of case. After that, Mr. Cohen will discuss the Service's responsibility for enforcing the ERISA minimum funding standards and the relationship of the funding standards to the financial soundness of the pension plan.

At the conclusion of all of our statements, my colleagues will make every effort to answer any questions you might have.

Mr. Chairman, if you have any questions that you would like particularly to direct to me, as I have informed the staff, I do need to leave as early as possible, and I will be happy to deal with those questions now.

Senator RUDMAN. Thank you very much for your statement. I will defer any questions I have for you at this time.

If I do have any specifically for you, I will ask you to answer them for the record.

I will yield to Senator Nunn and see if he has any direct questions.

Senator NUNN. Just a couple direct questions.

Mr. Commissioner, you said the Teamsters Union had agreed and signed a waiver so you could answer questions here today and go into more detail, and you mentioned a waiver of the Privacy Act. Is that the Privacy Act or the Tax Reform Act?

Commissioner EGGER. It is the 1976 act, which is now embodied in section 6103 of the Internal Revenue Code. It is the waiver of those provisions.

Senator NUNN. And those provisions, as you interpret them, have really precluded a full exchange between your people and our staff in preparation for these hearings; have they not?

Commissioner EGGER. That is correct because, as I said, the waiver just came to us over the weekend.

Senator NUNN. Did you request that waiver?

Commissioner Egger. No, we did not. It was volunteered by the Fund Manager.

Senator Nunn. Do you find it a bit paradoxical that the Internal Revenue Service has to get a waiver from the Teamsters Union in order to be able to answer questions before a congressional hearing?

Commissioner Egger. I think, Senator Nunn, it is a subject we have to discuss at some length. There are many, many ramifications of what we should or should not discuss before congressional hearings with regard to taxpayer information. There are instances, obviously, where the committees need more information than they receive from time to time, but there are other instances in which the privacy of the taxpayer is of paramount importance.

Senator Nunn. Mr. Commissioner, you are familiar with the administration endorsement of legislation very similar to what we have been pushing for some time from this subcommittee, that is, amendments to the Tax Reform Act, which would bring a degree of balance and commonsense to the whole question of what IRS can and cannot do in reference to other governmental agencies?

Commissioner Egger. We had some discussions of that and with you, as a matter of fact, in connection with the 1981 act.

Senator Nunn. Right—and since then, I understand, though—of course, we passed the Reform Act in the Senate and got knocked out in conference. Since then, I understand the Reagan administration has fully embraced those revisions and will have its own legislation on the subject in the near future; is that right?

Commissioner Egger. I cannot answer that question. I do know we have had some discussions of it in the Treasury. We have a few more points to discuss in the Treasury before there is a complete decision as to that legislation.

Senator Nunn. Wasn't that part of the President's crime package, revision of the Tax Reform Act?

Commissioner Egger. Yes, I believe so. Again, I am not familiar with all the details of what the administration does or does not agree with, keeping in mind there are many departments of the Government that are involved here besides the Treasury.

Senator Nunn. Who, on your team, is working with the administration on that legislation?

Commissioner Egger. I am working with the Treasury and then the Treasury has its own people, the Deputy Secretary and the Assistant Secretary for Enforcement.

Senator Nunn. Thank you very much.

Senator Rudman. I would just like to say I suspect we would like, at some point, a clear statement from you, Commissioner, as to the position of the Service on these amendments as proposed by the administration.

Commissioner Egger. Certainly.

Senator Rudman. We think it is important.

I know in the past few months we have seen instances where these inhibitions went beyond what the basic intent of the law was, in my view. That is where we believe these changes are most important for the legitimate purpose of getting information which this subcommittee and other committees of the Congress really should have.

I have no further questions.

We appreciate your being with us this morning. We know you have a tight schedule and you are certainly excused at this time.

Commissioner EGGER. Thank you very much, Mr. Chairman.

Mr. Winborne will proceed with his statement.

Senator RUDMAN. Mr. Winborne.

Mr. WINBORNE. Thank you, Mr. Commissioner.

Thank you, Mr. Chairman.

I am pleased to bring you up to date today on the Service's investigation of the Teamsters Central States Pension Fund and try to describe for you the procedures that have been developed to coordinate the examination of pension plans by the Service and the Labor Department.

As the Commissioner has indicated, we have a continuing commitment to enforce the ERISA minimum standards within our area of responsibility.

With your permission, at the conclusion of his statement, I will ask Mr. Cohen, the Service's actuary, to discuss the Service's responsibility for enforcing the minimum funding standards and the relation of the ERISA funding standards to the financial soundness or the so-called financial soundness of pension plans.

As we described in previous testimony before this subcommittee, notably last fall, the Service began an examination of the Central States Fund several years before ERISA was enacted in 1974. With the enactment of ERISA, the Employee Plans/Exempt Organizations Divisions were established in a number of our field offices to better enforce the requirements of the Internal Revenue Code applicable to tax exempt entities, such as qualified retirement plans like the Central States Fund.

In 1975, the new Employee Plans and Exempt Organizations, Division of the Chicago District, became responsible for the ongoing examination of the fund. This was the Service's first major examination of a multiemployer plan subsequent to the enactment of ERISA. At about the same time that we started our investigation, the Labor Department began a separate investigation of the fund. In June 1976, the Chicago district office revoked the Service's previous determination that the fund satisfied the qualification requirements of the code. This revocation was based on the Chicago district's determination that the fund had violated the code's exclusive benefit rule.

The district's decision was based on findings that many loans had been made from the fund's assets for inadequate security or for an inadequate rate of interest. In addition, at that time, the Chicago district found that the fund's records were not adequate to determine the benefits payable to all the participating employees.

After taking prompt action to prevent the revocation of the fund's determination letter from adversely affecting the tax liability of both employers contributing to the fund and participating employees, the Service closely coordinated with the Labor Department in joint negotiations with the fund to reorganize the fund in several respects.

As a result of these negotiations, in April 1977, the Service issued a new determination letter holding that the fund was again qualified under the code, but subject to the fund's compliance with eight conditions, perhaps the most important of which required that the fund transfer all of its assets to independent managers, that is all of its assets except those reasonably necessary for benefits and administration expenses.

Shortly thereafter, the fund entered a 5-year asset management agreement with the Equitable Life Assurance Society and Victor Palmieri & Co., an agreement which continues in effect today.

As I stated earlier, the Service's investigation of the fund was conducted shortly after the enactment of a law of great complexity and at that time, procedures for coordinating the Service's examinations with related activities by the Labor Department had not yet been formulated.

As a result, some actions such as the Service revoking the qualification of the fund without first giving notice to the Labor Department, were taken at that time. Because of procedures now in effect, such actions would not be repeated under similar circumstances today or in the future. However, although the Service has been criticized, I think it is fair to say that the fund's use of an independent asset manager arrangement grew directly out of the disqualification since one of the conditions of requalification required the great majority of the fund's assets to be placed under the control of Equitable and several other independent asset managers.

On September 10, 1979, the fund applied for a new determination letter from the Chicago District Office concerning its tax exemption. Because a determination issued in response to the fund's 1979 application would supersede the fund's 1977 requalification letter, any condition contained in the 1977 letter and not restated in the subsequent determination letter would no longer be applicable to the fund.

Because of the potential impact of any new determination on the independent asset manager arrangement and other measures intended to reform the fund, the Service has given careful consideration to the fund's 1979 application.

In the course of our consideration of the application, we had first experienced significant difficulty in obtaining complete information from the fund about its coverage of employees of the Teamsters Union locals. A more serious problem, however, was the fund's refusal to permit an onsite examination of its books and records. As a result, the Service issued an administrative summons to the fund on April 14, 1980. The fund failed to comply with the summons and summons enforcement action was initiated in the U.S. district court in Chicago, which resulted in the issuance of an order of the court permitting the Service to conduct an onsite examination of the fund's operations.

The Chicago IRS and Labor Department field offices have coordinated closely in conducting their simultaneous examination of the fund. Procedures for sharing information about the fund's operations have been established and the investigators from the two agencies are essentially in daily contact.

At the national level, the IRS and the Labor and Justice Departments have also cooperated with regard to their activities involving the fund. As Commissioner Egger indicated, on March 5, 1981, the Secretary of the Treasury, the Secretary of Labor, and the Attorney General established a litigation strategy task force to coordinate actions by the Government regarding the Central States pension and health and welfare funds. As the Commissioner noted, I have been designated as the Treasury Department's representative on the task force, and in that capacity, have worked very closely with the Labor Department's representative—its Solicitor, Timothy Ryan—and the Justice Departments' representative—the Assistant Attorney General for Criminal Matters and the Assistant Attorney for Civil Matters.

During the last several months, members of the task force have been involved in extensive discussions with the fund concerning a wide spectrum of the Government's ERISA concerns in an effort to formulate a comprehensive consent decree that would protect the interests of the fund's participants for the long term. With the concurrence of the fund, the issuance of a new determination letter was delayed so that any conditions in the new letter would be consistent with any consent decree that might have been negotiated with the fund.

The Service's general efforts to coordinate the investigation of multiemployer plans were enhanced by reorganization plan No. 4 of 1978. This reorganization plan, which you will recall was approved by Congress, requires the Service to coordinate with the Labor Department before revoking the determination letter of a qualified plan in any case where violations of both the exclusive benefit rule under the Code and the ERISA fiduciary standards administered by the Labor Department are involved.

Under this coordination procedure, the Service may not revoke the plan's determination letter unless it first notifies the Labor Department and the Labor Department approves such action or fails to object to such action within 90 days.

The coordination requirement of reorganization plan No. 4 provides a mechanism for the Government to decide on the best enforcement sanction in an exclusive benefit case such as this. This subcommittee is well aware that the sanction of disqualification is often not appropriate in cases of this type. As the committee knows, the sanction of plan disqualification will affect the tax liability of many individuals, including, unfortunatley, those who were not responsible for the transactions that caused the plan to become disqualified.

However, disqualification may have no effect on the individuals who were responsible, such as plan trustees or other fiduciaries not contributing to or participating in the plan. Thus, the coordination requirement under the reorganization plan provides the Service an opportunity to refer cases for the Labor Department to pursue under the more flexible sanctions of title I of ERISA such as seeking court-ordered equitable relief for violations of the ERISA fiduciary standards administered by the Labor Department.

In addition to the coordination mandated by the reorganization plan, the Service and the Department implemented a coordinated compliance agreement. Under this agreement, the two agencies exchange lists of the names of plans that each has identified for examination. And further, each agency notifies the other of issues arising in an examination that would be of interest to the other agency. While the coordinated compliance agreement does not prevent both agencies from examining the same plan in an appropriate case, as has been done in the case of the fund, the agreement minimizes both the duplication of effort in our overall enforcement program and the cost imposed on the private sector by unnecessary duplicative enforcement activities.

Members of this subcommittee have inquired about the Service's responsibility for monitoring the Central States fund to insure, one, that the minimum funding standards are satisfied and, two, that the fund remains actuarially sound. The responsibility for determining whether the ERISA minimum funding standards are met is within the Services' jurisdiction and we have previously testified that we will determine whether the fund complies with the minimum funding standards when they become applicable to the fund at the end of this year and the fund files the appropriate return.

However, the Internal Revenue Service has no statutory authority for determining whether a plan is actuarially sound.

When the chairman and ranking minority member of the subcommittee invited us to testify today, they expressed their interest in both of these questions. I want to emphasize that, as the members of the subcommittee know, these areas are highly technical and do not lend themselves to concise explanations. That being the fact, with your permission, I would like to ask Mr. Cohen, Director of our Actuarial Division, to explain these matters in whatever detail the subcommittee would like.

Senator RUDMAN. Thank you very much, Mr. Winborne. I must say that the sentence in your closing paragraph on page 7 that you stated that these areas are highly technical and do not lend themselves to concise explanations, I am starting to wonder whether they are subject to any explanation or any understanding. It is very difficult for me to understand, first, what the lines of administrative responsibility are and, second, what the jurisdictional questions are and it seems to me that there is a real blur that surrounds these lines of jurisdiction of authority and I am going to be very anxious to hear what Mr. Cohen has to say. Maybe he can explain it so we will all understand it. There is also a possibility that the law needs some revision in terms of placing accountability in certain places.

I think that is what Senator Nunn is interested in. I know that is what I am interested in because in anything as technical as this, if there is blurred responsibility, I think you are going to be sure there will be a blurred response. I think that has been part of the problem. I will not ask any questions at this time. I will yield to Senator Nunn and then we will look forward to hearing from Mr. Cohen.

Senator NUNN. Mr. Winborne, you say the Internal Revenue Service does not have the statutory responsibility of determining actuarial soundness?

Mr. WINBORNE. Yes, Senator, as I understand it the term actuarial soundness does not have a readily accepted definition among actuaries. And, further, there is nothing in the statute that we can find which refers to actuarial soundness and, therefore, actually the responsibility for actuarial soundness, as some people seem to use that term, is not delineated in the statute. That is what we are going to to try to have Mr. Cohen put in your record today and maybe help you understand that a bit.

Senator NUNN. The Labor Department also has the same position, do they not, that they are not responsible for determining actuarial soundness?

Mr. WINBORNE. I would suspect that they would take the same position, although I have not seen it officially written anyplace, Senator.

Senator NUNN. We will hear from Mr. Cohen and then get into questions. I agree with Senator Rudman, though. The question is, as

I see it, whether the minimum standards—I am sure a lot of people felt the minimum standards were designed to produce actuarial soundness, but I am sure that is open to a great deal of question about whether that even was the purpose and certainly whether or not that purpose can be accomplished through the minimum standards.

Mr. WINBORNE. When I first became involved in this area in mid-1978 I had precisely the same understanding, Senator. I no longer have quite that understanding, and Mr. Cohen, I hope, will tell us why at this time.

Senator NUNN. Fine, I will defer further questions until we hear from Mr. Cohen.

Senator RUDMAN. Mr. Cohen.

Mr. COHEN. Thank you.

I have a fairly long statement, 11 pages. If you would prefer, I would be glad to summarize the more salient points, emphasizing the main aspects relating to actuarial soundness and minimum funding.

Senator RUDMAN. I would suggest you do that, Mr. Cohen. We will, without objection, incorporate your entire statement into the record.[1] If you will highlight this issue that we are concerned about, I expect that both Senator Nunn and I will have some questions for you so we might better understand this problem which frankly at this point nobody I believe in the entire government understands.

Maybe you do.

Mr. COHEN. Thank you very much, Senator.

As Mr. Winborne indicated, we have jurisdiction relating to the minimum funding standards but not to actuarial soundness. Before I get into the specifics of each, I would like to give just a little background as to what the minimum funding standards are and what the actuarial soundness concept is.

The minimum funding standards basically require that a plan fund each year an amount not less than the normal cost plus a 40-year amortization of the past service liability.

Now, the 40-year amortization of the past service liability is equivalent to what it would take on a 40-year mortgage to pay off an amount equal to this past service liability.

The concept of actuarial soundness, as indicated, is not anything that is clearly defined anywhere. One possible definition of actuarial soundness is that the plan would have to be able to provide benefits as they become due within a specified number of years. Nothing in the law has any such requirement. Actuarial soundness is not a qualification requirement and cannot be considered as such. The minimum funding standards themselves do not insure actuarial soundness because with the minimum funding standards, you are amortizing your past service liability over 40 years.

Consider, for example, a plan which has a lot of people who are at retirement or near retirement and a relatively small number of active participants and you have this large liability which represents mostly benefits for people in pay status. This is being paid to these people over their lives and their life expectancy may be somewhere around 40 years—excuse me, around 15 years. Yet the minimum funding standards require that you pay off this liability over 40. Clearly, the plan could be satisfying this and putting in contributions less than the dollars that are being used to pay out, and if the plan doesn't have very much assets at the particular time, it can run dry and always satisfy the minimum funding standard.

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[1] See p. 318 for the prepared statement of Mr. Ira Cohen.

Senator **Rudman**. Let me interrupt you one moment just to make sure I understand what you have just said. To take a hypothetical case here, if we had ERISA in 1903 and we had a horse and buggy, not the horses but the buggies, and we had a buggy manufacturer who was in business and thriving with a lot of employees in their fifties and sixties and it in fact was meeting the minimum funding requirements, are you saying that of course that probably won't be actuarially sound because the chances are that by the time these people are reaching the point of getting their money out there will be nobody else left putting it in, are you saying that?

Mr. **Cohen**. That is one aspect. A second aspect is assuming the minimum funding always applied and a company established a pension plan today which covers a lot of retirees and people near retirement, there are no assets in the plan. The current payouts could exceed the minimum funding requirements and the plan could be insolvent before it gets off the ground, or it can happen a year later, 2 years. All the minimum funding requires is that over a long haul, and this may be a 40-year period, the value of the money going in is going to equal the value of the benefits for all participants. But you could have the money being drained out more rapidly than it is putting in as a part of the minimum funding standards and it doesn't deal with this issue. It doesn't require elevated funding in that situation.

Senator **Nunn**. Is the minimum standard 40 years?

Is that in law?

Mr. **Cohen**. Yes; it is.

Senator **Nunn**. Any plan no matter what the nature of it is has the same standard?

Mr. **Cohen**. Yes; the law, as I am getting into, has been changed to reduce the period to 30 years. It is the MPPAA that has changed the amortization, and there have been some other changes which I will be going into fairly shortly.

As I said, the MPPAA, and that was what ultimately came out of what I referred to in last year's testimony as H.R. 3904. This did reduce the amortization period from 40 to 30. Nonetheless, the condition I described could still happen. This is an example where all assumptions, actuarial assumptions are realized. Easily a plan could run into problems if there are significant investment losses or anything else of this nature.

Besides merely decreasing the amortization period, the MPPAA came up with a very different concept as far as minimum funding, and the concept was applied to plans that were in reorganization.

Now, reorganization is a technical term precisely defined in the MPPAA, but the purpose of the reorganization provision is to identify a plan that is most likely to come into financial difficulties. And the basis that is used is they look at the vested liabilities, that is, the liabilities for vested benefits and in particular for vested benefits that are in pay status.

When they look at the liabilities for vested benefits in pay status compared to the assets, and if there is a deficiency, then they have some actuarial adjustments that are made to this to determine whether the plan is in reorganization.

It is really a comparison between a shorter amortization of these vested liabilities. That is 10 years for those in pay status, 25 for others compared with the general minimum funding requirements, the essence of which is to identify plans which have exceptionally large vested benefits that are not funded by the current assets.

Now, a plan will not be in reorganization unless the value of vested benefits in pay status significantly exceeds the assets so that a plan will not even been identified in reorganization if the assets are near, even if not equal, to the benefits for current retirees, even though there may be significant vested benefits for people currently working.

These standards are not perfect because a plan could still theoretically become insolvent—it is not likely. By insolvent, I mean unable to pay benefits as they become due. It is unusual for that to occur.

With the MPPAA, it said that when you are in reorganization, they have a more rapid funding requirement. So the object of this was to increase the funding requirements only for those plans that are most likely to be in trouble.

Now this more rapid funding requirement itself is not a soundness standard. One illustration of that is after you go through all the provisions in the MPPAA and the minimum funding requirements, there is a special provision which requires that you have to put an amount in each year not less than the amount by which the current benefit payments for that year and expenses will exceed the assets and the growth on the assets.

In other words, there was a recognition within the MPPAA that even these elevated funding requirements may not be sufficient to pay the benefits out over any length of time, just for that 1 year, and they impose that as an absolute minimum. That would be a far cry from what one might normally think of as an actuarial soundness standard.

There are many reasons by which a plan can run into trouble. One might be—and these were adjustments because it is a voluntary system and there were adjustments which would actually decrease funding requirements in some instances.

One example is if you have a tremendous decline in the base units, that is the amount of work which generates contributions so that the minimum funding may be reduced in this. Another area in which it could be reduced is what is defined as overburdened plans. That is a situation where only the number of people in pay status exceeds the number of participants in the plan.

One might ask after this: Isn't soundness the most significant policy?

Minimum funding may seem like a method to achieve this, but if the standards are not soundness standards, why aren't they in the law?

I would like to give at least my understanding why neither ERISA nor the MPPAA had put in actuarial soundness standards.

There are two basic reasons. One is the cost, the added funding.

When a person establishes a plan, and if this person liberalized benefits under a plan—if there are a number of people who are near pay status, that is near retirement, the cost of providing and funding their benefits over a very short period of time could be enormous.

In my prepared statement, I have given an example of just that situation.

If you had very strong actuarial soundness standards in the law, you might find that most plans are only going to provide what is referred to as a future service benefit, some benefit for each year of service after establishment of the plan without providing a benefit for service before establishment. If that is what happens, it would mean that when a plan is established, there are very small, even miniscule benefits that are being paid for people near retirement or retiring in the next number of years.

It would take maybe 20 years before the plan could provide any meaningful benefits to anyone. With that in mind, it would not serve the social interest that the employer is trying to accomplish by establishing the plan and telling people who are retiring in the next couple of years to take heart, those who are retiring 10 years down the line, 20 years down the line may finally be getting meaningful benefits.

If you are going to permit the providing of these benefits without this rapid funding, and that is what this amortization period is all about, then you are going to be runing smack into a problem of a plan not having enough assets to provide benefits as they come due as a potentiality.

A second reason is the cost. Aside from the cost of providing the benefits, these computations that would be necessary to implement a true soundness standard would be computations that are not normally done and these types of computations would be quite expensive and it would mean much more administrative expenses.

Considering that most plans are not running into this type of problem, this type of expense some may feel would not be warranted because a much higher portion of the contributions would be going into expenses rather than into the ultimate delivery of benefits and that might prove to be quite burdensome.

This is my understanding of why the law is what it is today, why it does not have soundness standards in them.

I cannot say that at this point that I think the law is perfect, that it is the golden mean between these two concepts. It is really hard to judge. All I can say is I think that the purpose of the minimum funding is to provide some sort of meld between these various concepts.

This is the compromise that we have now that Congress first reached in ERISA and then subsequently modified for multiemployer plans in the MPPAA in 1980.

Senator Rudman. Mr. Cohen, thank you, very much. That was very helpful and I think you have given us some good parameters of the definitions of these two terms.

Let me see if I can restate something you said to test my own understanding of what you said. If I understand you correctly, any actuarial evaluation of these plans, be they these plans under ERISA or actuarial standards used before ERISA, would almost have to disregard any potential possibility of the amortization period not being reached, that that kind of a subjective judgment is not made. That just has to be assumed.

It has to be assumed that this period of this base work, as you defined it, will continue through the period of the plan. If that was attacked in any way, then, of course, you couldn't establish any actuarial soundness at all. Are you saying that?

Mr. **Cohen**. I am not saying that any actuarial valuation has to disregard that. I am saying that the law does not mandate that the actuarial valuation consider that. Clearly the plan administrator, or whoever is employing the actuary, the trustees, can focus into this issue.

There is nothing that precludes the various parties from considering what would the situation be like, how much assets would we have at various points of time if various circumstances occurred. This could be well part of a decision that may be used by the trustees in deciding what level of funding do they want.

These are only minimum standards. They may go beyond the minimum standards so that this can well be considered in a valuation. It is just that the law, ERISA, and the MPPAA do not require its consideration.

Senator **Rudman**. Well, obviously, the shorter the time of amortization, knowing anything about probability tables, the shorter the time of amortization the greater the chance that everybody will come to pass as presumed.

The longer the period, the more the probability tables start to drop off.

Mr. **Cohen**. That is correct.

Senator **Rudman**. Somebody who is trying to do a very sound actuarial job and do it very conservatively would like to shorten this period from the 40 years allowed down to the 30 down to a much shorter period.

You are also saying in order to do that the amount of front-end contributions to that plan to make retirees who are coming up in the foreseeable future secure under actuarial standards would be possibly prohibitive in some areas.

Mr. **Cohen**. That is correct. It would amount to—if you assume in a collectively bargained plan, and this is generally what happens, a level of contributions is negotiated, the more conservative policy that is used in setting the benefits, that comes after to see what can be provided by these contributions.

The more conservative, the less benefits you will be paying to current retirees, but the more secure you will be that all benefits will be able to be provided.

Obviously, as you raise the level of benefits, you have less security but your current retirees are receiving more and this is the balance that the trustees would have to deal with.

Senator **Rudman**. Then, of course, if the Congress were to decide taking a narrow view that we wanted to now move actuarial soundness into this law, which we obviously have not done in a way that specifically defines, and did that essentially by setting a very conservative sound standard, we would essentially be making it very difficult for a great many employers to even get involved at these plans at all because, then, the minimum funding requirements going to that kind of amortization schedule would become prohibitive.

Are you also saying that?

Mr. **Cohen**. That would probably be correct.

Senator **Rudman**. Senator Nunn?

Senator **Nunn**. In general then before getting into specific questions on the Teamsters fund the soundness of many, many of these pension plans depends on the future viability of the particular industry, does it not?

Mr. COHEN. That is probably the single most important factor in determining whether a plan will or will not survive. If the industry caves and you don't have the work coming in and the cost of providing these benefits get put on top of smaller and smaller payrolls, increasing with the passage of time more and more employers tend to drop out which further feeds on itself. It becomes a very vicious cycle if the plan reaches that situation, and probably little can be done at that time.

Senator NUNN. I was at a meeting on general economic patterns the other day and one of the economists projected 10 industries, I won't name them here, major industries in the United States and this particular economist predicted a decline, a serious decline in those industries over the next 20 years that would not be interrupted except for a brief period of time.

Eventually those industries will be phased out altogether in this country. Under that kind of scenario what does this do to the pension plans of those industries that have them hypothetically?

Mr. COHEN. The plans that are not very well funded but there are significant liabilities in excess of assets and where there is a tremendous decline in employment may become a very, very serious problem. It depends upon how long the decline is and whether it phases out or improves, or if it does not, there is really no source of the money.

Senator NUNN. Do we have a public policy to deal with that situation now on the books? Do we have any Federal policy to deal with a large industry or even for that matter any size industry where the pension plans are vested but the industry declines and cannot make the payment?

Mr. COHEN. The only policy I can think of is some of the other aspects of the MPPAA at least as it relates to multiemployer plans. You have the Pension Benefit Guarantee Corporation, which can make payments as financial assistance to plans that are insolvent, unable to provide benefits as they come due. There may be reductions in benefits because these benefits may be exceeding the guaranteed limits.

For plan terminations, other than multiemployers, you have termination insurance from the PBGC which provides some benefits. These are supported by premiums. In the MPPAA you have withdrawal liability and the object of the withdrawal liability is when an employer withdraws from the plan and there are certain exceptions to the rule, there may be some payments that the employer may have to continue to make to the plan in order to keep the plan more viable.

This too—and I would add it has been a fairly controversial feature of the MPPAA—has been dealing with this issue. So it isn't that this issue has not been considered. What will happen if a lot of major industries have very serious decline I don't know. I would imagine that the Pension Benefit Guarantee Corporation would bear the brunt of something along these lines. It might have some sort of analysis of that.

Senator NUNN. Who funds that corporation?

Mr. COHEN. That is funded out of premiums collected from the premiums imposed on the plan. I forgot what the exact numbers are, but it is some amount per person covered. It is a head tax. It is not a tax, premium for each person covered.

Senator **Nunn**. How much Government funding goes into that?

Mr. **Cohen**. You mean out of general revenue? None.

Senator **Nunn**. None at all? Turning to the Teamster pension fund, one of the problems you described, startup funds and the actuarial soundness of startup funds—and I think you made a very clear explanation of that—but the Teamsters fund, the Central States fund, that fund has been in existence for a long period of time. So those problems should be nonexistent in that fund, shouldn't they?

Mr. **Cohen**. Startup is just the easiest to describe. But whenever you amend a plan, if you talk about the plan that existed 10 years ago, the benefits were much smaller and the plans are constantly being amended to keep pace with inflation and other aspects and that makes it somewhat—the amendment itself causes an increase in liability resulting from the amendment.

Whether you are getting that with respect to past service is very similar in nature to the establishment of a plan. So that even a plan that has been in existence for many, many years, will have some of the same problems because it is constantly being liberalized and there are constant increases in liability as a result of benefit improvements.

Senator **Nunn**. The Central fund was requalified by IRS in April of 1977 with a letter giving certain conditions of requalification. Is the fund now a qualified tax exempt organization?

Mr. **Winborne**. Yes, it is, Senator Nunn. It still has in its possession that 1977 qualification letter.

Senator **Nunn**. Both GAO and IRS have stated four or five of the eight conditions of requalification have not been met by the fund. What enforcement action has IRS taken to enforce these conditions?

Mr. **Winborne**. Maybe we should ask the district director from the Chicago district to elaborate on that, Senator Nunn.

Mr. **Bergherm**. Senator, we are in constant monitoring of the fund, of the eight conditions specifically that are contained in the letter that you referred to. And in addition I think as you probably know there has been an application since then for a determination letter which is also under current consideration in the district office.

Senator **Nunn**. Is the fund in violation of four of the eight conditions?

Mr. **Bergherm**. No; I would be glad to go through those eight conditions individually, if you wish. But as a general statement, no. That is not true.

Senator **Nunn**. How many of them are they in violation of now?

Mr. **Bergherm**. The fund is currently meeting the requirements that have been imposed by the Internal Revenue Service with respect to the eight conditions. There are some of those conditions which we have mutually agreed are no longer applicable and those have been eliminated from our monitoring. There are also conditions, at least one that I can recall, in which the point of diminishing return in effect has been reached and there is no more applicability from that standpoint. So there are various circumstances that relate to the eight conditions. I would not conclude in a general statement that the fund is in violation of any of these eight conditions.

Senator **Nunn**. You would not conclude that they are in violation of any of the eight?

Mr. **Bergherm**. That is correct.

Senator NUNN. But you would disagree with GAO's findings on that?

Mr. BERGHERM. Yes.

Senator NUNN. Wasn't there a previous IRS memorandum that stated that they are in violation of four or five of the eight conditions?

Mr. BERGHERM. I will be glad to be reminded of that if you wish, Senator. I am not sure what you have reference to.

Senator NUNN. I think the last testimony before this subcommittee was that, that was the case?

Mr. WINBORNE. I am not sure violation was the word used. I think discussion went to the degree of compliance and whether that degree of compliance was satisfactory, unsatisfactory or what have you is my recollection. But if you have something that we could focus on, we would certainly be happy to do so.

Senator NUNN. It is my understanding that the last testimony we had from the IRS is that the fund had failed to comply with four of the eight conditions, failed to comply I guess is the word rather than in violation.

Mr. WINBORNE. If so, it probably failed to fully comply. Just 1 second. Let me doublecheck on something on this.

Senator NUNN. In any event you are saying they are in full compliance with all eight or are you saying they are in partial compliance or exactly what are you saying?

Mr. BERGHERM. There is a degree of compliance with all eight. I think there would be some clarification if you would let me give you the status of each of the conditions.

Mr. WINBORNE. Before he does that I would like to remind the subcommittee that of course we have not made final decisions with respect to several of these items and therefore it is impossible for us to be specific as to just what additional compliance might be required. I think Mr. Bergherm is well aware of that. I wanted to say that for the record to you.

Senator NUNN. How long is this? We could put all of that in the record if you would like.

Mr. BERGHERM. I can be quite brief with regard to it. I will say not to exceed 5 minutes if you wish.

Senator NUNN. All right.

Mr. BERGHERM. The first condition related to certain amendments to the plan which were needed in order to bring the plan into conformance with ERISA. Those amendments were adopted in a proper fashion by the fund as of April 28, 1977. So that was basically contemporaneous with the issuance of the requalification letter by the district director.

The second condition related to the requirement for a data base which would provide a reliable means of determining the creditable service of fund participants upon the occasion of their applying for benefits from the fund. You may know that the condition of that data base was grossly inadequate at the point in time that the revocation letter was issued and the program is terms of placing that data base in a credible fashion assuring that not only the appropriate data was incorporated within the data base but also that it was incorporated in an accurate fashion which would properly facilitate the determination that the benefit has been accomplished.

Maybe I should amend myself and say that in most human events thing are not accomplished in an absolute sense but in terms of a practical sense improvement of that data base to deal with the requirements of benefit claims in a practical sense has been accomplished.

The condition three related to a number of claims which had previously been submitted and which in the judgment of those reviewing the record had been dismissed or not acted upon in a proper fashion. So the condition then addressed the issue of reevaluating these claims and to take all reasonable efforts in terms of locating the claimants, in terms of perfecting the basis of the claims and then taking an appropriate action to dispose of the claims based upon the merits of each individual case.

In that regard, a very comprehensive effort has been made in terms of reevaluating all of these claims and it has finally worked itself down in terms of figures, it was a base of 3,093 such cases at the earliest point in time and that has worked itself down to a residual of 36. We agreed administratively that all exhaustive efforts to resolve these last 36 have reasonably been made and so that residual is one which is acceptable from an administrative standpoint.

Once again over 3,000 have been worked down to an unresolved residual of 36.

Condition four had to do with the loan review, what we termed the loan review; and I suppose this might be referred to as one of the most complex, time-consuming, and effort-consuming conditions that were incorporated within that requalification letter. In essence what that condition required was that a review be made of the loans which were in default or in any way were not in a current stage or state of repayment, with a determination to be made as to what kind of action could be made to minimize losses against the fund and what kind of actions could be taken against the indebted parties to recoup the amounts that had been loaned to those parties.

That monitoring of that particular condition was an effort initiated in the district and subsequently assisted by the National Office of the Internal Revenue Service in terms of opinions that were solicited from that source regarding the adequacy of the loan review.

The general conclusion which certainly was disturbing from an administrative standpoint, but nonetheless was a fact in our minds, was that the point in time had passed by in terms of a probability of recoupment of these particular loans. That certain facts which were known internally within the Internal Revenue Service which might be helpful with regard to those loans, with the recoupment of those loans or the potential losses would not be available to the fund. What I am alluding to there, is the tax return information which the Service had which we used in terms of monitoring the actions of the fund but which were not available to the fund. Once again this loan review is not a Service activity. It was a condition imposed upon the fund and the presumption has to be that the fund would have to use the facts known to it, not the facts known to the Service in terms of tax return information in terms of designing its actions, the fund's actions in terms of that loan review.

To summarize the point, the conclusion reached was that the time had so mitigated against the possibility of recoupment under these loans and the circumstances in general was against the possibility of recoupment and therefore the administrative conclusion was reached that the fund had reasonably pursued those actions and accomplished that type of review which was appropriate looking toward the minimizing of the losses or the delinquencies involved.

Passing on to the next condition, condition 5 required that the fund impose an investment policy to control its decisions with respect to the handling of more specifically the investing of the funds' assets. This to a considerable extent intertwines with a subsequent condition which I will speak to which is professional independent asset management. But to speak directly to condition 5, the trustees did in the manner required on November 16, 1977, include investment policies and the written commitments of the fund managers in terms of control of the funds.

Condition 6 required an internal audit staff to be organized by the fund and to review the administrative expenditures allocation of funds, fund receipts and the investment and administration of the fund. That internal audit staff was formed and operating as early as July 1, 1977.

Condition 7 had to do with the requirement of the fund to publish annually in a newspaper general circulation in each State the annual certified financial statement of the fund. This was done for the first year after requalification and thereafter, after serious administrative consideration a conclusion was reached that this was an unnecessary expense. I am speaking now from an administrative standpoint. That decision was reached, not from the funds' standpoint although I am sure they had the same point of view—that it was an unnecessary expense and redundant inasmuch as there were public records with regard to the financial statement of the fund provided by other means.

And therefore, in effect, the condition 7 with regard to the publication in various newspapers throughout the country of the financial statement was withdrawn.

Condition 8, I would highlight as the condition in my mind which is of greatest significance and that was the condition which required the fund to place in the hands of professional independent asset managers all of the funds except those reasonably needed for the meeting of the current benefits and administration expenses. The fund once again as you well know did place within the hands of two distinct organizations those funds and has continued to maintain through a contract entered into with independent asset managers the funds in the hands of those independent asset managers on a continuous period after the initial implementation of this subsequent to the requalification letter.

Senator NUNN. Thank you very much. If you want to put a more complete explanation in on each one of those points we would be glad to have that for the record.

[The material to be supplied for the record follows:]

QUESTIONS AND ANSWERS

Question 1. **Does IRS have a financial investigation unit similar to that set up by the Treasury Department to identify narcotics transactions which will identify and detect corrupt labor practices?**

Answer. The Service does not have a separately organized financial investigation unit that is responsible for investigating corrupt labor practices. However, the Service frequently participates in the Department of Justice Strike Force investigations of criminal violations of the tax laws involving labor unions.

Question 2. Is it accurate to state that abuses in the Benefits and Administration Accounts of the Fund could have disastrous financial effects on the Fund similar to abuses of the management of assets? The money in the B&A Account is money coming into the Fund from contributors.

Answer. Between September and December 1979 the trustees of the Fund accumulated substantial additional B&A assets. The Fund may have accumulated these assets in the expectation of using the assets to settle a lawsuit brought against the Fund. In addition, we have indicated to the Fund that we question the level of assets that have generally been retained from the independent managers. When the requalification letter was issued, the Service felt that it was appropriate for the Fund to retain assets so that the trustees would not lose the responsibility for benefit payments. These assets have been invested very conservatively. Although these assets have been substantial, they are not overwhelmingly large in relation to the Fund's overall assets. The likelihood of serious abuse of the B&A assets is limited in view of the extent of the Government's monitoring of the Fund. The determination letter issued to the Fund on November 11, 1981, contained a condition limiting the amount of assets that may be held in the B&A Account.

Question 3. The amount on reserve in the B&A Account has fluctuated greatly. At times it was $65 million and at times it rose to $150 million. Has IRS determined what appropriate reserve amount should be in the B&A Account in light of the fact that these funds are governed solely by the trustees?

Answer. The determination letter issued to the Fund on November 11, 1981, contained a condition limiting assets retained by the Fund to those the Fund actually determines are necessary for benefits and administration expenses, taking into account assets available from the independent managers. Under the condition, B&A assets must be managed and invested in accordance with the advice of qualified independent managers. The condition also includes an overriding formula that requires B&A assets not to exceed 2½ times the sum of the previous month's benefit payments and administrative expenses.

Question 4. Will the current suit to recover benefits and set adequate benefits have any impact on the Fund if there is a substantial recovery? The latest actuary who examined the Fund stated that there is very little margin for error particularly in projecting future income. The actuary did not consider the potential impact of this lawsuit. How can such a suit affect the funding of the Teamsters Fund?

Answer. To the extent that the suit results in the creation of new plan benefits payable from existing plan assets, the Fund's minimum funding requirements may be increased somewhat. Much of the impact of such an increase in liabilities would be amortized over many years. It is also interesting to note that the actuary's statement as to little margin did not come from the most recent valuation. Based on testimony by Mr. Lehr, the funding status may have improved somewhat.

Question 5. Will IRS make any determination with respect to the Fund's proposed new contract with the independent asset managers?

Answer. The Labor Department has sole jurisdiction over the Fund's request for an exemption concerning the asset manager arrangement by reason of Reorganization Plan No. 4. Of course, the Service will ascertain the effect of the new agreement on matters such as the independence of the Fund's asset managers.

Question 6. There are numerous aspects of the new proposal which concern us. The main provisions which gave us concern are:

(1) The asset managers will be required to invest all proceeds from real estate investment plus 25 percent of all new funds in real estate. Under the 1977 agreement, no investments were to be made in real estate.

(2) The moneys earmarked for securities investment can be transferred at will into real estate investments.

(3) The trustees will assume a substantial voice in investment policy.

(4) The trustees can terminate with or without cause and without the consent of the Department of Labor.

(5) The trustees will pay Equitable a smaller percentage fee for securities assets it manages than for real estate-related assets it manages.

Will this encourage substantial real estate investment as had been the past policy and will this lead to giving the trustees carte blanche with respect to the Fund once again and eliminate any effectual government monitoring of the Fund? Has IRS reached an opinion as to the new proposal as to how it affects requalification of the Fund as a tax exempt organization?

Answer. The Service is concerned with the proposed agreement and will closely monitor the impact of the agreement upon the qualified status of the Fund. The agreement has not been finalized, however, and we do not believe it appropriate for the Service to state what action it may take in response to specific future actions by the Fund.

Question 7. **With respect to the conditions of qualification of a tax exempt organization, IRS has responsibility to determine if a fund is operating for the exclusive benefit of the beneficiaries. In this respect, when IRS disqualified the Fund it detailed certain imprudent practices with respect to the Fund and how Fund money was not being used for the exclusive benefit of the beneficiaries. Does the "exclusive benefit" rule involving the tax exempt organizations require IRS to determine financial soundness of the Fund or is it restricted to financial activities of the trustees?**

Answer. The "exclusive benefit rule" requires that a plan be administered for the exclusive benefit of all employees. (See Rev. Rul. 69-494, 1969-2 C.B. 88.) It does not require contributions necessary to make the plan "financially sound."

Senator NUNN. Does the Internal Revenue Service have any remedies available to it that do not create drastic consequences on innocent third parties such as employer contributors and the beneficiaries?

Mr. WINBORNE. Senator, maybe, I guess we probably should try to establish what occurrence, that there are certain excise taxes of course for prohibited transactions that might take place, things of that sort. But I have an idea you are speaking of the——

Senator NUNN. Let's speak in terms of what you found in 1977, with that kind of occurrence. Is your only remedy to disqualify the plan and therefore hurt many innocent third parties?

Mr. WINBORNE. In the area of that type of situation, yes. Our remedy is to find that the plan is not qualified and, of course, I have explained earlier and I am sure you are familiar with the results and impact of such a finding of no qualification.

Senator NUNN. In our last hearing your counsel, Mr. Stein, testified that IRS had other available remedies other than revocation and what are those remedies?

Mr. WINBORNE. I am a little reluctant to testify for what Mr. Stein had reference to, but I do think that at that point in time he might have felt that there were some documents or some oral statements which could amount to a contract of some type which might be enforceable. However, since that time, we have concluded that such is not the case. There was no enforceable contract beyond the impact and effect of the qualification letter. It is also possible that Mr. Stein had in mind the excise tax remedies for other types of transactions.

Senator NUNN. Is the excise tax an appropriate remedy for abuses similar to those that occurred in the Teamsters Central State fund?

Mr. WINBORNE. It would not apply totally in an exclusive benefit-type situation such as we are talking about here where you have gross imprudence and perhaps even beyond the trustees.

Senator NUNN. Isn't the excise tax only against employers?

Mr. WINBORNE. It is against those persons who are in a disqualified status who commit what we call a prohibited transaction. It could be an employer, it could be some other type of service provider or other types of people who are in a disqualified position.

Senator NUNN. What about trustees, union trustees?

Mr. **Winborne.** It is conceivable if they involve themselves in prohibited transactions, yes.

Senator **Nunn.** Does the Internal Revenue Service obtain copies of all financial forms such as form 5500 and the LM–2 is filed by organizations such as trust funds and labor unions?

Mr. **Winborne.** We certainly retain all the 5500's. The LM–2's, I am just not positive whether we retain it at this time. That must be a form filed with the Labor Department on behalf of the Labor Department.

Senator **Nunn.** It relates to unions rather than trust funds.

Mr. **Winborne.** Beg your pardon?

Senator **Nunn.** It relates to unions rather than trust funds.

Mr. **Winborne.** I am simply not familiar with it and none of my colleagues seem to be.

Mr. **Cohen.** This is something filed with the Labor Department and to my knowledge we do not get it.

Senator **Nunn.** Do you have access to it?

Mr. **Winborne.** I am sure we could have access to it if we asked for it, although I have not tried. I am just assuming we can because of our degree of cooperation involved.

Senator **Nunn.** Does the IRS have a record management system that enables IRS to profile typical financial abuses in unions and trust funds and flag these abuses?

Mr. **Winborne.** Senator, we are now just completing the audit stage of what we call our taxpayer compliance measurement program which I think we have testified to previously here. That program was entered into with a completion date of November of this year for the audit portion as the first originating step that would lead us to what we call a profiling or discriminate function type of computerized selection of returns for audits.

It is going to be another 12 to 14 months before the statisticians and others complete the work in this area and give to us a profile which we hope can then be programed into the computers and which by pushing the appropriate buttons and so forth we will be able to select returns for audit which are in the most need of audit. But we do have this underway at the present time. As you may or may not know we have had such a discriminate function, return selection process on the income tax side for a number of years which has enabled us to select with a high degree of accuracy tax returns that are in most need of audit.

We hope to apply this same type of principle to the employee plans area within the next 12 to 14 months. That should be in place. I hope that is an answer to your question.

Senator **Nunn.** That is exactly what I was getting at. As a result of the IRS investigation of the Central States fund how many criminal tax convictions have resulted?

Mr. **Winborne.** Criminal tax convictions? I certainly wish I could answer that but I do not have that information, Senator. I am not sure we have anybody here today who would be able to answer for the criminal tax convictions. Would you, Mr. Bergherm, have any idea?

Mr. **Bergherm.** I can answer on that.

Mr. **Winborne.** Sorry.

Mr. **Bergherm.** There was a criminal case involving Alvin Baron which resulted in a conviction. There are a number of criminal cases still in process.

Senator **Nunn**. There are how many?

Mr. **Bergherm**. There are a number. I have a total of three here that are identified in the record that are in the so-called fraud suspense status which means criminal considerations are under consideration.

Mr. **Winborne**. I think he is probably referring to growing out of this suspension audit.

Senator **Nunn**. How about civil tax cases that are drawn out of this?

Mr. **Bergherm**. There were 66 referrals which we made to the various components of the Internal Revenue Service for either civil or criminal consideration. Of those 66 there were 61 criminal and civil examinations initiated. The remaining part of those 66 were not started for reasons that the examinations of the subjects having already occurred and the problems with reopening and based upon the evaluated process, the decision was made that the remaining 5 would not be reopened. But of the 66 referrals 61 cases were initiated. As I said all but four of them are destined for resolution from the civil standpoint rather than the criminal standpoint.

Senator **Nunn**. Has the Internal Revenue Service monitored the B. & A. account of the Central fund to determine if abuses exist?

Mr. **Bergherm**. Yes. We have been in virtual continuous monitoring with the exception of the period of time in which we had a lack of understanding with the fund in terms of their willingness to have us on the premises. That of course related to a summons action. But with the exception of the period in which we were not able to be present on the funding premises we have continuously monitored the so-called B. & A. account.

I do refer to those as so-called because it is my understanding it is not a specific title used in the accounting systems. It is a general classification of accounts which relate to the purpose that the words indicate, benefit and administration.

Senator **Nunn**. Have you determined an appropriate amount of reserve in that account?

Mr. **Bergherm**. Senator, my response would be that that is one of the very crucial things at this moment in time which is under consideration. I mean daily under consideration and it is a point of strategic concern to us. I would prefer not to go into the detail of that for that particular reason.

Senator **Nunn**. But you are monitoring that very carefully?

Mr. **Bergherm**. Yes.

Mr. **Winborne**. Let me say in that regard we do have concerns as to the amount of that fund and as I believe you have been told maybe by the Department of Labor that is one of the concerns which was up for discussion at some length in the meetings with the fund that has been going on for several weeks and we of course have the same concern as to our qualification letter and as I testified we have delayed making a final determination in writing that language into the qualification letter pending conclusion of all of the negotiations as to prevent some inconsistencies.

We do not wish to be accused of going off on our own and doing something improper, but with everybody being as near to agreement as possible.

Senator **Nunn**. The General Accounting Office made a number of recommendations regarding IRS and this fund. I would like to get you to respond to each one of them. GAO recommends that the Department of Labor and the Internal Revenue Service need to take action above and beyond the conditions required by the April 1977 agreement to remove the trustees control over and their influence on all the moneys received. Labor and IRS should, based on its current evidence and further evidence about to be revealed under this investigation, consider proposing a reorganization of the way the fund handles and controls employers' contributions and its other moneys to remove the trustees' control over any of these funds.

What do you say to that recommendation?

Mr. WINBORNE. As the Department of Labor I believe testified here, I saw part of the transcript of their testimony, that also was an item which has been discussed. The independent unaffiliated trustees for the fund. Certainly the Internal Revenue Service would be very pleased if such an arrangement can be worked out. However in terms of our qualification letter we have some grave concerns as to whether it would be within the Commissioner's discretion to attempt a mandate of that type of reorganization for purposes of the qualification letter.

But certainly the Internal Revenue Service would be tickled if such could occur. It would have to be to the benefit of the plan participants and everybody else involved.

Senator NUNN. GAO further recommends a written commitment from the fund to continue to employ professional asset managers indefinitely. Would you respond to that?

Mr. WINBORNE. Certainly the Internal Revenue Service is in favor of independent asset managers. I think unless that provision can be worked out in some kind of a consent decree arrangement which would be enforceable by the judiciary, by a court, that kind of requirement will appear in any new requalification letter that we issue to the fund and therefore my bottom line answer is yes, we are totally in favor of the continuation of the independent asset management.

Senator NUNN. GAO also recommends that Labor and Internal Revenue Service should insist that the trustees appoint a financial institution as custodian to handle the B. & A. account, pay administrative expenses and pension benefits and transfer excess funds to the investment manager.

Mr. WINBORNE. That recommendation gives us some problem. It is our opinion that our tentative conclusion, bear in mind we said, and I believe Mr. Bergherm said a few minutes ago, a final decision has not been made within the Service as to what kind of a control we would ultimately require over the B. & A. account, but certainly if a control is instituted which would reasonably prevent the misuse of those B. & A. assets, then it would not seem completely necessary to introduce the aspect of independent B. & A. asset managers on the order of the present independent fund managers. But we are hopeful on that at the present time.

Senator NUNN. Labor and IRS should confine the trustee's role to setting investment policy, deciding on the investment manager and custodian and determining pension benefit levels and eligibility requirements.

What would you say to that?

Mr. WINBORNE. That would seem to be the other side of the coin, removing the trustees from the handling of any of the assets of the fund, and I would think my earlier answers would be applicable here. Certainly as to the great bulk of those assets which are now managed by the Equitable Assurance Society and by Palmeiri and other independent asset managers, we would think that should continue. Then my statements as to whether a similar independent asset manager is needed for the B. & A. assets would also apply. That is, if a suitable effective reasonable control can be put into effect, that may not be required. But we are still open.

Senator NUNN. GAO also recommends that any agreement entered into should be a formal, written, enforceable document. Do you agree with that?

Mr. WINBORNE. We certainly would be very pleased if something in the nature of a consent decree could be entered into, could be filed with the appropriate courts and therefore offered to the Government, the additional remedies which a court could give us in the event of attempted or actual violation of any of those terms of agreement.

Senator NUNN. One of the GAO recommendations related to coordination and cooperation between Labor and IRS. Do you believe that you do have that kind of coordination at this point?

Mr. WINBORNE. Senator Nunn, I think I can speak with complete knowledge that since May 1978, certainly since that time the degree of cooperation has been excellent. With the advent of the new administration, the new Secretary, the new Solicitor, I believe that the degree of cooperation has even been elevated to higher levels.

I have absolutely no concerns about the degree of cooperation between the IRS and the Department of Labor at the present time.

Senator NUNN. Do you believe it is possible to let the fund retain its own trusteees but still restrict their activity in a way that assures protection of the fund by a consent decree?

Mr. WINBORNE. Do I believe it is possible to restrict? I guess this again really goes to the management of the moneys in the B. & A. account. I think my previous answers would have to apply here. Yes; I do believe it would be possible to work out restrictions as to the amounts of moneys to be retained and as to the uses of those moneys in the B. & A. account and that there would be no significant change or damage being done to the fund.

Senator NUNN. Mr. Cohen, as I understand it, these figures have been updated in our testimony, but the unfunded liability of the fund, I believe, today, according to the recent testimony of Mr. Lehr, is something like $6 billion and the assets are a little over $3 billion, meaning about a 2-to-1 ratio between unfunded liability and assets.

What does this mean in terms of the financial soundness of the fund?

Senator RUDMAN. I also believe that the testimony was that there is a 27-year amortization. That is what the testimony was.

Senator NUNN. I might add this was improved rather significantly since 1979–80. At that time I think the unfunded liability was about $7 billion and the assets were about $2.8 billion, and I believe the amortization period was about 39 years. So there has been a significant improvement.

What does this tell you, though, in terms of where they stand today?

Mr. COHEN. No. 1, based on the 1979 report itself with the $7.6 billion unfunded, there was no indication in the report or anything that would really suggest that the plan was not actually sound, at least based on the type of definition that I posed before, some sort of cash flow test. The assets were somewhat less, but not significantly less than the present value of benefits for people in pay status.

What has happened since this reduction from $7.6 billion to $6.05 billion that was indicated came from two sources. The letter from Mr. McGinn to Mr. Lehr indicated that one is from a change of actuarial asumptions and the other represents a real improvement.

Let me get into this change of actuarial assumptions and what this is all about. The actuary has a duty and a responsibility for periodically reviewing the assumptions, the actuarial asumptions used to determine costs.

A reduction as a result of a change of actuarial assumption is not a reduction in liability. Nothing has really happened. What it is is a change in the way the actuary is measuring this liability. The liability of the plan is to provide benefits as they come due. The change of assumptions is simply saying that based on current estimates, the best estimate of the actuary, you need less money now than you had thought you would have needed in the past. This can occur, for example, by a change of interest rates. He did indicate, however, in that letter, that there was a significant improvement, whatever that means, even without regard to the change of assumption.

The change from 39 point something years to about 40 years to 27 years is a step forward, but as far as actuarial soundness, it is not the most significant. I have some problem with the statement that this is a major thing.

Over a long period of time, let me explain what this is about—you have the $6.05 billion. I am not sure what interest rate that is based on. The difference is whether this is going to be paid off like on payments to a 40-year mortgage or payments to a 27-year mortgage.

Based on the 6½-percent interest rate, the payments on a 40-year basis will be $398 million per annum and for a 27-year basis it is $448 million. That leaves a difference of $50 million in excess.

You are talking about something in the neighborhood of 8 percent of the minimum funding requirement is the improvement in fund; $50 million is a nice sum of money but considering the size of the plan, it is not all that enormous. However, what becomes really significant is not what is being done this one year at the rate in which you are paying it off. What becomes significant is whether this policy is maintained over a long period of time.

For example, if this $50 million extra is being put in it year after year, and based on a 6½-percent interest rate, at the end of 10 years, you would be talking about $715 million extra. At the end of 20 years, you would be talking about $2.1 billion, but a comparison of saying that at this point I am putting in this money at a 27-year rate is not the most significant thing. It really will mean that shortly after they come back to the 40, they can go a little higher than the 40 because the funding is cumulative and take advantage of this amount. If over a long period they stay at that rate, that would become, as the figures indicate, quite significant. But I do want to emphasize that the original report itself, the statements that were cited by GAO, you know, the actuaries show a sound concern for a lack of margin, but he was talking about minimum funding, not actuarial soundness in that statement. He did indicate in the 1979 report, the report that the GAO report was based on, he did indicate that he anticipates over a period of time the assets going in are much greater than the benefits and expenses going out; and that he indicated that this is intended to continue on to the future.

I haven't examined this thing. All I have done is read the report and I am commenting on what the report has said. It is not based on an IRS determination of the validity of any of these claims, nor is there anything in the report to suggest on its face that the claim, that the statements that the actuary made are in any way to be doubted.

There just hasn't been any independent analysis.

Senator NUNN. Will there be?

Mr. WINBORNE. When the minimum funding standards apply and whichever report forms the basis of just defining the minimum funding standards, we will examine and we will determine whether the minimum funding standards are satisfied. That will be more than just merely reading the report and seeing that the numbers look consistent with each other. It will mean independent analysis, comparison, for example, of data that is being used.

Do they have the right number of people in the report? An analysis of the reasonableness of the assumptions and perhaps considerable discussion with the actuaries as to why various aspects were chosen and whether it makes sense.

That will be done as part of the examination, but done with the objective of determining whether or not the plan meets the minimum funding requirements.

Senator RUDMAN. Mr. Cohen, how many people do you have in your division to assist you in this operation?

Mr. COHEN. In the Actuarial Division there are approximately 25 employees, 19 actuaries and the rest are clerical.

Senator RUDMAN. Approximately how many plans do you have to look at in terms of their actuarial, if not soundness, at least to examine them actuarily?

Mr. COHEN. The plans are not looked at as original jurisdiction in the actuarial division of the national office. This is done by our field force in connection with examination of the plans. We stand ready to provide technical advice and assistance to them, but, as the numbers suggest, there is no way that with 19 actuaries, we individually are the ones who can be looking at these plans. This is done in the key districts.

Senator RUDMAN. What kind of actuarial staff do you have out in the districts? Let's say out in Chicago.

Mr. BERGHERM. I would represent this effort as one that is primarily vested in the district organization to initiate considerations as to the minimum funding standards requirements but one in which there is an opportunity for referral for technical assistance which can be made to the national office. So it is both, the resource is both the field and the national office that will deal with such actuarial matters.

I do have employed in the district organization an individual or individuals in that particular discipline. But by no means would I represent that that is the extent of our resource.

We would call upon the national office for assistance where required.

Mr. WINBORNE. If I may elaborate on that, this is the procedure used throughout the Internal Revenue Service in a lot of disciplines. We cannot employ people who are highly disciplined in such areas as actuarial science and place them in the numbers that we might like to throughout all of our field offices. For years we have had in the national office all the areas of the Internal Revenue Code and now, including the ERISA portions of the code here, we hope some of the highest skilled and most able in these disciplines such as the actuarial area and the way we accomplish this is the field is given as much guidance and leadership and training as they can through various training courses and various communications with the national office to alert them to what to look for once they find something, once they see something that they do not quite understand, or know what to do with. Then the procedure provides for them to send it to us. We become involved in that particular case.

Senator RUDMAN. Let me just follow up on that, though. I never have been able to get an answer to one of the questions and I will come back to that; that is, how many of these plans to your knowledge do you currently have? If you have no original jurisdiction over, I think I know the number, but I want it for the record. Do you know?

Mr. COHEN. I am not sure I understand the question.

Senator RUDMAN. How many plans are coming under ERISA jurisdiction in this particular pension area?

Mr. COHEN. Let me just get back to you in 1 second. OK?

Senator RUDMAN. I seem to have a hard time getting the answer to that question. But go ahead. We will get the answer eventually.

Mr. WINBORNE. Senator, we don't have a specific answer. We would like to give you one, but because of the complexity of which ones would require this kind of treatment, and what have you, if you would allow us, we would like to think about this and try to get that back to you in a written form.

Senator RUDMAN. I wish you would. We do have it from the Labor Department. I won't question it because I don't recall it specifically. But it is in the tens of thousands.

Mr. WINBORNE. I am sure it is a significant number, yes.

Mr. COHEN. If the question relates to how many plans are subject to the minimum funding standards, it will be considerably over tens of thousands.

Senator RUDMAN. It is multiple of tens of thousands. It is enormous.

Mr. WINBORNE. I think we would like, if we could, to take a look at this and get back to you.

[The information follows:]

Form 5500 series returns filed with the Service for calendar years 1978 and 1979 indicate that approximately 120,000 defined benefit plans (of which about 20,000 had more than 100 participants) and 135,000 defined contribution plans (of which about 2,000 had more than 100 participants) were subject to the minimum funding standards in those years. It should be noted, however, that defined contribution plans do not provide a stated level of benefits, and actuarial valuations are generally not required with regard to such plans.

Senator RUDMAN. If I understand correctly from your Chicago director, he has staff, but obviously not highly trained actuarial staff, but staff who is trained to understand what the problem is and to recognize it. Is that correct?

Mr. Bergherm. That wasn't the intention I meant to give. I have staff with very substantial disciplines in actuarial requirements. I do not have a great number of those people.

Senator Rudman. How many of those people do you have?

Mr. Bergherm. I am thinking in particular of one individual that I have great reliance on. And then others which have a lesser level of skills in terms of actuarial discipline but what I would want to leave you with is the impression that that is not the extent of resources of the Internal Revenue Service. I would rely upon the national office.

Senator Rudman. Coming back to that, how many district offices are there, Mr. Winborne?

Mr. Winborne. There are 58 district offices but I think at the present time only 17 are what we call key district offices which would be offices responsible for the employee plans matters.

Senator Rudman. We have Mr. Cohen telling us he has got 20-some odd people?

Mr. Winborne. I would not like a difference of viewpoint between our field people and our national office. I do not believe in the field that we have anybody hired and classified and called the actuary. We, of course, have agents of various types who have varying levels of skills.

Senator Rudman. Mr. Winborne, I am not asking these questions to be in any way critical of the Service. As a matter of fact, I think Mr. Cohen's testimony is about the most lucid I have had in this area. I am very impressed. But I think one of the points that obviously comes through here, when we are dealing with the kind of enormous responsibilities that you have, and we have passed laws in which we are expecting minimum funding requirements to be observed, we are expecting some kind of actuarial standards to be applied and the sense of the answer I have here today is taking the most conservative number, or liberal, depending on the way you want to look at it, we probably have less than 100 people in the IRS who have the technical competence to look at this kind of problem and put up a red flag where a red flag is needed when we are talking about dealing with billions and billions of dollars of funds contributed by employers and employees under plans which have been promulgated under the laws passed by this Congress and employees who believe that they are secure because the Government is watching out for their funds and I get the funny feeling—it is not so funny, it is kind of a sick feeling—that there could be things going on out there that we don't know about, that you don't know about and that we could have other situations that can be far worse than the situation we are describing this morning.

That may seem like a very good pitch for increasing your appropriation and maybe it is. But I just think the point has to be made.

Senator Nunn?

Mr. Cohen. May I make one statement?

Senator Nunn. Yes; go ahead.

Mr. Cohen. We will be glad to furnish information that you asked for as far as the number of plans subject, but I would like to emphasize that some of these statistics can easily be misleading because you will find that approximately 90 percent of the plans have less than 25 lives.

You may be looking at huge numbers, but the vast majority of plans are small plans and are not of the type that you had described.

Senator NUNN. Either way, though, if you multiply a large number of plans by a small number of people, you have a large number of people or multiply a large number of people by a small number of plans, you still have a lot of human beings involved, right?

Mr. COHEN. When you multiply a large number of plans by a small number of people, you may have a large number but you may have, the remaining 10 percent of the plans, you have considerably more than half of the participants covered.

Senator NUNN. Let me ask this question here.

You are saying the Internal Revenue Service, Mr. Cohen, is not responsible for making a formal determination of actuarial soundness, right?

Mr. COHEN. That is correct.

Senator NUNN. You are saying that actuarial soundness itself is very difficult to define?

Mr. COHEN. That is correct.

Senator NUNN. You are also saying, though, as I understand it, that you look at the minimum funding standards in a rather detailed way when you are concerned about the overall soundness of the plan and if you are concerned about the actuarial soundness of a plan, it would stand to reason that you would look more stringently at the minimum funding requirements, is that correct or incorrect?

Mr. COHEN. We look at the minimum funding requirements, No. 1, because it is in the law and it is our responsibility. And, No. 2, for the reasons that it is in the law, it is there to help, although it doesn't assure financial soundness.

We do take our responsibilities seriously in this area.

Senator NUNN. It seems to me, Mr. Cohen, it is sort of like pornography, it may be hard to define but you know it when you see it, don't you, on actuarial soundness?

Mr. COHEN. This analogy has been made before.

Senator RUDMAN. But, Mr. Cohen, I think you are also saying that per se there are plans which because of the social policy involved are not actuarially sound if you want to look at all the assumptions that a very conservative actuary would apply because of the testimony you gave earlier and the whole problem——

Mr. COHEN. That is correct.

Senator RUDMAN. Maybe what we ought to do here is do what the surgeon general does. Maybe we ought to have a little label that appears on these policies that says to the employees, "The Commissioner of Internal Revenue wants you to know your plan may not be actuarially sound" because that is the bottom line of this testimony here today, that there is nothing in the law or policy which guarantees anything other than minimum funding which with a whole range of things could affect the actuarial soundness.

Mr. COHEN. That is correct.

Senator RUDMAN. Mr. Winborne, just a few questions on the role that IRS plays in some of these other areas and I just do this for the record because it seems to me we do have some blur, if you will, in some of the areas of responsibility, although I think we have pretty well got this actuarial soundness question well ventilated this morning.

[At this point, Senator Nunn withdrew from the hearing room.]

[The Letter of Authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on Labor Racketeering and Management Corruption, on Wednesday, October 28; Thursday, October 29; Monday, November 2; and Tuesday, November 3, 1981.

WILLIAM V. ROTH, JR.,
Chairman.

SAM NUNN,
Ranking Minority Member.

Senator RUDMAN. The question I would like to ask you has to do with some of the other things that have been proposed in the contract with the independent asset managers.

I would like to know if the Internal Revenue Service has responsibility to get involved in some of these things and this might be something your district director from Chicago might talk about.

For instance, a lot of the proposal deals with real estate investment, requirements that they are proposing that they be allowed to go back into the real estate market with at least the 25 percent of new funds and all net proceeds from current real estate to go into other real estate; questions about earmarking security investments, money occasionally into real estate investments.

There is some question as to what kind of a voice the Trustees will play in setting this policy, which was the subject of our hearings last week, and so forth.

We know what the Labor Department thinks about its role.

What is your role in this area?

Mr. WINBORNE. Senator, if you are speaking precisely to a change in percentage of the fund's investments in real estate or real estate related type investments——

Senator RUDMAN. Speaking of both.

Mr. WINBORNE. So far as I am aware, there is nothing in the Internal Revenue Code which would specify such percentages as long as there is appropriate diversification on an overall basis and I might add that the problem with the real estate investments which has been highlighted and discussed in connection with this fund for many years, I don't think was against the real estate investments, per se, it was against the way in which those investments were made, the terms and conditions.

Senator RUDMAN. We are aware of the fact there are not specific percentages contained in the Code. I think that what we are really asking you here is, will you play a role in determining how they will make real estate investments in the future and whether or not they will be making real estate investments in the future, is that a role you will share with the Department of Labor?

Mr. **Winborne**. We certainly would have an interest and think that it could well impact on the exclusive benefit rule which in turn would impact on the qualifications of an exempt plan if something were really wrong with the way they were investing in real estate.

For instance, if they invested every dollar in real estate, we would want to know and have an adequate explanation as to why, is this good, is this bad?

If they got completely out of real estate, we would be concerned. We have not tried to determine a precise amount of real estate investments that would be appropriate or inappropriate at this point in time.

Senator **Rudman**. Mr. Winborne, do you have any idea as to how much this entire investigation, going back to its inception, has cost the Internal Revenue Service?

Has anyone done an internal estimate of that?

Mr. **Winborne**. No, not to my knowledge. I do not have an idea. It is a long, long ongoing investigation and has many facets. It has extended to many different States, in many different ways. I do not have a total figure.

Senator **Rudman**. A final question that I have really has to do with this whole question of jurisdiction, both legal jurisdiction and responsibility as imposed upon you by the Congress and essentially how the administrative law grows out of that legislation and how that sets up additional jurisdiction, if you will, not in a primary sense but in an oversight sense.

Are you satisfied that at this time the Department of Labor and the Internal Revenue Service have the kind of an ongoing relationship and a permanent staffing, if you will, in this particular issue and other issues that may arise that will enable us to avoid some of the things that have happened in the past which many believe contribute to the problem rather than helping to solve it, and can you describe what those efforts are from your point of view?

Mr. **Winborne**. As I cannot be so prophetic as to guarantee anything infinitely in the future, certainly on the basis of the present personalities that I am aware of in both agencies and on the basis of the present procedures that are in effect, specifically the Reorganization Plan No. 4 procedure and the coordinated compliance program, I feel very comfortable so long as those things remain in place, so long as those people remain in place.

Certainly with the advent of new people and efforts undertaken to change those, it might become just as complex and uncertain as actuarial soundness seems to be.

Senator **Rudman**. I just simply comment to that, we understand you have a turnover of people and things change. You read the history of this and you go back—hindsight is always 20–20, but it would seem that somewhere along the line, some of the people in the IRS and, I think, more so in the Department of Labor, would have seen some indications that unquestionably more vigorous action taken at the time would have shortened this entire problem.

[At this point, Senator Nunn entered the hearing room.]

Senator **Rudman**. I just want to feel reassured here that in the future you have the kind of mechanism established that will enable you to do the kind of things you have to do, such as Senator Nunn had suggested at another hearing, taking more vigorous legal action rather than just assuming protracted negotiations would always necessarily lead to where you wanted to get.

Mr. WINBORNE. One point I tried to make in my opening comments having to do with Reorganization Plan No. 4: Whereas back in 1976, the Service simply revoked the qualification, and left the Department of Labor to whatever it could accomplish in a judicial sense under its title of ERISA, that would not occur again so long as the present procedures are in effect.

If we conclude there has been a violation of the exclusive benefit rule which is significant enough to consider a disqualification, we then coordinate with the Department of Labor for the primary purpose of making a determination as to whether that is the right action or is legal action which is open to and available to the Department of Labor, the correct action to take at that time.

Senator RUDMAN. Let me come back to one specific question in that whole area of jurisdiction.

One of the requirements of the requalification is that there be an independence professional asset manager. Wouldn't you be interested? Let me restate it.

Are you interested in a possible agreement that could erode the independence of that manager and how closely you intend to look at that?

Mr. WINBORNE. We certainly would be very interested in and would intend to take a close look. In the course of these meetings, these ongoing meetings throughout the summer which have been described, we have been discussing this point with the Department of Labor at great lengths so we are both working toward the same end there.

Senator RUDMAN. Mr. Winborne, I appreciate your testimony this morning and I, again, want to commend Mr. Cohen.

I think he has taken a very complex subject and given us a very clear understanding of that subject, at least, in terms of how clearly we have to understand it.

I think it is quite clear to me at least that when we get into the whole area of actuarial soundness, we have some social policy decisions as well that contribute to whether or not how far you want to impose that.

I appreciate you being here and testifying. I will yield it back to Senator Nunn for any closing questions he may have.

Mr. WINBORNE. Thank you, Senator.

Senator NUNN. A couple of questions.

Under ERISA, actuarial determinations are required. What guarantees or what kind of check does the Government have to insure the actuary is not in collusion with a client that requires a good actuarial evaluation?

Mr. COHEN. Guarantees? I don't know——

Senator NUNN. Check points, then, to determine—do you have a way of checking?

Mr. COHEN. If we would be looking at an evaluation that is, No. 1. independent, are they including the right people?

This would be broad brush checks. Are the assumptions reasonable and there is a tremendous spectrum of what reasonable is. The House committee report indicates we should not be challenging an assumption unless it is substantially reasonable.

The pattern that we would probably look for to see—and this is consistent with our prior revised rules relating to reductions, whether there is a consistent pattern of substantial losses from sources likely to recur, by losses, this is when the experience is worse than what was anticipated, and if it is consistently worse and substantial, it may mean the actuarial assumptions are unreasonable.

I want it clear that this is not very precise because a rule of thumb on actuarial assumptions, let's say, interest rate, is a change in your assumed interest rate; this is the rate that you anticipate to be earned over, maybe a 30-year period, a one-quarter of 1 percent rate may have an effect of approximately 6 percent on costs.

Now, surely trying to estimate what is the interest rate going to be on these assets and new money over the next 30 years, no actuary can predict, I don't think anyone could predict what the interest rate is going to be within a quarter of 1 percent at the end of the year.

If you are talking about an impact of 6 percent flowing from each quarter of 1 percent, we would have to go a considerable amount of time before we could even challenge, so there would be a very wide range to this process.

In ERISA, the actuarial report has to be signed by an enrolled actuary. The determined enrolled actuary was created in ERISA and it is a process where there is a joint board for the enrollment of actuaries and all actuaries who sign these reports must be enrolled.

If they are doing something that is improper, this joint board can disenroll. The joint board consists of members, three from the Treasury and two from the Department of Labor. They would ultimately—they are responsible for enrolling and ultimately would be the arbiters of whether there should be a disenrollment through improper conduct of an actuary. But other than the actions that the joint board might take——

Senator NUNN. Is that actuaries just dealing with these funds or is that actuaries in general?

Mr. COHEN. These are actuaries signing reports relating to pension funds, satisfaction of the minimum funding standards. It is strictly relating to pensions. It has nothing to do with actuaries for other purposes such as insurance and things of this nature.

Senator NUNN. Is it possible to compare two funds in terms of assets and unfunded liabilities without having all the assumptions relating to the actuarial soundness of each?

Can you just look at, for instance, the Western Pension Fund and compare it to the Central States Fund in terms of unfunded liabilities, in terms of assets, in terms of amortization times, that kind of thing?

Does that give you any kind of ballpark estimate of relative soundness?

Mr. COHEN. First of all, without knowing the assumptions and a number of other factors that comparisons would not be meaningful, you may be able to compare two funds and reach a conclusion that one is in better shape than the other.

For example, one plan may have assets considerably in excess of benefits for people currently in pay status, and another may not. But having done that, as I indicated, there are choices that the trustees make and if you took all plans and were able to characterize them, you would find that some are going to be choosing funding that is more conservative than others and they are looking at the interrelationships between what current retirees are getting as compared to future retirees, essentially.

I am not sure how meaningful a comparison—assuming you found plan A is better than plan B, it is just an exercise of choice that is permitted.

Senator NUNN. Thank you very much, Mr. Cohen, and all the witnesses. We appreciate you being here this morning and appreciate your continued cooperation with the subcommittee.

Senator RUDMAN. These hearings of this subcommittee on the Government's ability to combat labor racketeering will conclude tomorrow with a hearing that will start at 9:30 in the morning in room 3302 of the Dirksen Building.

The witnesses will be Mr. Lane Kirkland, president of the AFL-CIO, and Mr. Thomas D. Wilcox, the executive director of the National Association of Stevedores.

Thank you all very much.

We will stand in recess until tomorrow.

[Whereupon, at 11:35 a.m., the subcommittee was recessed, to reconvene at 9:30 a.m., Tuesday, November 3, 1981.]

GOVERNMENT'S ABILITY TO COMBAT LABOR MANAGEMENT RACKETEERING

TUESDAY, NOVEMBER 3, 1981

U.S. Senate,
Permanent Subcommittee on Investigations
of the Committee on Governmental Affairs,
Washington, D.C.

The subcommittee met at 9:36 a.m., pursuant to recess, in room 3302, Dirksen Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. William V. Roth, Jr. (chairman) presiding.

Members of the subcommittee present: Senator William V. Roth, Jr., Republican, Delaware; Senator Warren B. Rudman, Republican, New Hampshire; and Senator Sam Nunn, Democrat, Georgia.

Also present: Senator Don Nickles, Republican, Oklahoma.

Members of the professional staff present: S. Cass Weiland, chief counsel; Michael C. Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; and Katherine Bidden, chief clerk.

Chairman Roth. The subcommittee will be in order.

This morning we are convening the final day of this subcommittee's most recent hearings dealing with the broad subject of labor-management relations and particularly the Teamsters pension fund and the International Longshoremen's Association. It is indeed a great pleasure for us to have with us this morning Mr. Lane Kirkland, president of the AFL-CIO, and Mr. Thomas Wilcox, president of the National Association of Stevedores. During the course of the last several days, the subcommittee has heard detailed testimony regarding progress in the oversight of the Teamsters Central States Pension Fund.

Of course, these hearings have been designed to follow up hearings held under the chairmanship of Senator Nunn last year. The appearance today of Mr. Kirkland continues a tradition of willingness of labor leaders, such as George Meany and Walter Reuther, to appear before this subcommittee and to give us the benefit of their views. We greatly appreciate your cooperation and we welcome you both, Mr. Kirkland, and Mr. Wilcox.

Mr. Kirkland, under our rules, everyone must be sworn in. So if all you would please rise. Do you swear that the testimony—are the other gentlemen going to testify?

Mr. Kirkland. I may call upon them.

Chairman Roth. Do you swear that the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Kirkland**. I do.

Mr. **Gold**. I do.

Mr. **Denison**. I do.

Chairman **Roth**. Thank you, please be seated.

Senator **Nunn**. That means any advice your lawyer may give in the course of this is also under oath.

Mr. **Kirkland**. I assume lawyers are always under oath.

Senator **Nunn**. Mr. Chairman, may I just make a brief comment?

Chairman **Roth**. Please.

Senator **Nunn**. Mr. Chairman, I have introduced 1163, and that was the bill we called the Labor Management Racketeering Act of 1981. That was introduced on May 12, 1981. Of course, we had many cosponsors, including several members of this subcommittee—Senator Rudman, Senator Nickles, Senator Chiles, yourself, and others. I have reintroduced the thrust of the same bill. It has a different number now, 1785, and that new bill has been introduced with the idea of smoothing out some of the problems in the other bill after talking with the Labor Department, after talking with the AFL–CIO, Mr. Kirkland, and others.

The main thrust of 1163, in fact the total thrust of 1163 has been incorporated in S. 1785. That bill would still make the Taft-Hartley Act a felony for all violations involving $1,000 or more. It would require immediate removal upon conviction of an individual convicted of enumerated crimes and crimes relating to his official position. It would broaden the definition of the types of positions an individual is barred from upon conviction of enumerated crimes.

It would increase the time of disbarment from 5 to 10 years for conviction of enumerated crimes. It would also provide escrowing for the convicted person's salary for the duration of his appeal, in case the conviction is reversed. And finally, it would clarify the jurisdiction of the Department of Labor with respect to its responsibility for detecting and investigating criminal violations relating to ERISA.

During the course of our hearing this morning, I think there will be witnesses, including Mr. Kirkland, who will probably refer to S. 1785. I just wanted to clarify that before we began. That is the most recent bill, but it is a followup on S. 1163: I would like to put my statement in the record which has already been made in introducing S. 1785 and incorporate a copy of this bill in the record.

Chairman **Roth**. Without objection, so ordered.

[A copy of Senator Nunn's statement for the record and a copy of the cited bill for the record follows:]

OPENING STATEMENT BY SENATOR SAM NUNN

Senator **Nunn**. Mr. Chairman, on behalf of myself and Senators Chiles, Roth, Rudman, Nickles, DeConcini, Stennis, Johnston, Pryor, Hollings, and Hatch, I am today reintroducing S. 1163, the Labor Racketeering Act of 1981. S. 1163 was originally introduced by me on May 12, 1981, and was designed to help ease the problems of corruption on the Nation's waterfront. Since introducing S. 1163 in May, we have consulted with many groups both inside and outside of Government. We have received many recommendations and suggestions to clarify and tighten S. 1163. The bill which I am introducing today contains all of the essential provisions of S. 1163, but with what we believe to be substantial improvements which represent the views and input of all parties.

The technical changes we are making have no substantive effect on the provisions of S. 1163. The main provisions of that bill remain intact in this bill. Those main provisions are:

First, making the Taft-Hartley Act a felony for all violations involving $1,000 or more;

Second, requiring immediate removal upon conviction of an individual convicted of enumerated crimes and crimes relating to his official position;

Third, broadening the definition of the types of positions an individual is barred from upon conviction of enumerated crimes;

Fourth, increasing the time of disbarment from 5 to 10 years;

Fifth, escrowing a convicted official's salary for the duration of his appeal, in case the conviction is reversed; and

Sixth, clarifying the jurisdiction of the Department of Labor with respect to its responsibility for detecting and investigating criminal violations relating to ERISA.

The changes made in S. 1163 which are incorporated into this new bill are, as I said, largely technical. Section 3 of S. 1163 is changed in the following way: That bill calls for the immediate removal of any person who has been convicted of any felony or any other crime, including misdemeanors, which involve the use or misuse of that person's labor union or employee benefit plan affiliation. We have altered that language by enumerating the particular officeholders subject to this provision, and by leaving the lists of disqualifying crimes now in 29 U.S.C. 504 and 29 U.S.C. 1111 as they are presently written. We have added to the end of the list of crimes a catchall phrase requiring removal if the individual is convicted of any Federal or State felony involving abuse or misuse of his official position.

In S. 1163, in sections 3 and 7, are lists of nine positions which an individual is prohibited from holding if he has been convicted of an enumerated crime. We believe that several of these positions were overly broad and as such might have caused problems such as inhibiting the payment of union pensions or even prohibiting union membership. This new bill contains a subsection replacing the original list with what we feel is a description more accurately reflecting the type of positions we intend an individual to be barred from.

The main change was in the last sentence which stated, "No person shall knowingly permit any other person to serve in any capacity in violation of this section." It has been brought to our attention that the word "permit" may inadvertently be construed by a court to mean that union officials who deal with a disbarred individual hired by a private entity may have some responsibility or criminal liability and alternatively employers who deal with disbarred union officials may have some criminal liability for their dealings. We therefore reworded the last sentence to read: "No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this section." This more accurately places the burden on the entity or individuals who actually employ persons who have been disqualified by virtue of a conviction.

This bill also contains some minor corrections of typographical errors we found in S. 1163 and which I will not enumerate here.

On October 28 and 29 the Senate Permanent Subcommittee on Investigations will conduct hearings during which we hope to hear the views of the Labor Department and the AFL-CIO on this bill. We are hopeful that we may gain their support for its swift passage by this Congress. It is imperative that Congress itself act swiftly to halt the growing corruption on our waterfronts. This bill is a significant step in that direction. It should serve as a signal to organized crime and corrupt union leaders that the American public will no longer tolerate their manipulation of our waterfront economy for criminal ends.

Mr. Chairman, I ask unanimous consent that the text of the bill be printed in the record.

97TH CONGRESS
1ST SESSION

S. 1785

To increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28 (legislative day, OCTOBER 14), 1981

Mr. NUNN (for himself, Mr. CHILES, Mr. ROTH, Mr. RUDMAN, Mr. NICKLES, Mr. DECONCINI, Mr. STENNIS, Mr. JOHNSTON, Mr. PRYOR, Mr. HOLLINGS, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be referred to as the "Labor Management Racketeering Act of 1981".

Sec. 2. Subsection (d) of section 186 of title 29, United States Code, as amended, is amended to read as follows:

"(d)(1) Any person who willfully violates any of the provisions of subsection (a) or (b) of this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in violation(s) of the provisions of this section does not exceed $1,000, he shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.".

Sec. 3. Subsection (a) of section 1111 of title 29, United States Code, as amended, is amended by adding the following after "No person" and before "who has been convicted": "who is an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan or who provides goods or services or who is a consultant or adviser to any employee benefit plan".

Sec. 4. Subsection (a) of section 1111 of title 29, United States Code, as amended, is amended by adding the following after "the Labor-Management Reporting and Disclosure Act of 1959": "or any other felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to any labor organization or employee benefit plan,

"(3) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(4) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization,

"(5) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization or employee benefit plan, or

"(6) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any labor organization or em ployee benefit plan

during or for ten years after such conviction or after the en of imprisonment on such conviction, whichever is the later unless prior to the end of such ten-year period, in the case o a person so convicted or imprisoned, (A) his citizenshi rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraphs (1) through (6) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this section.".

SEC. 5. Subsection (b) of section 1111 of title 29, United States Code, as amended, is amended as follows:

"(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.".

SEC. 6. Subsection (c) of section 1111 of title 29, United States Code, as amended, is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents a labor organization or an employee benefit plan or who provides other assistance to such organization or plan, concerning the establishment or operation of such organization or plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment.".

SEC. 7. Section 1111 of title 29, United States Code, as amended, is amended by adding at the end thereof the following:

"(d) Where any person, by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, upon the filing of an appeal of that conviction, any salary which would be otherwise due him by virtue of said office or position, shall be placed in escrow by the individual or organization responsible for payment of said salary. Payment of said salary into escrow shall continue for the duration of the appeal or for the period of time during which said salary would be otherwise due, whichever period is shorter. Upon the final reversal of said person's conviction on appeal, the amounts in escrow shall be paid to him. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization who was responsible for payments of those amounts. Upon final reversal of said person's conviction, said person shall no longer be barred by this statute from assuming any position said person was previously barred from.".

SEC. 8. Subsection (a) of section 504 of title 29, United States Code, as amended, is amended by adding the following after "or a violation of subchapter III or IV of this chapter": "or any other felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes, shall serve or be permitted to serve—

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to any labor organization or employee benefit plan, "(3) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(4) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization,

"(5) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization or employee benefit plan, or

"(6) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any labor organization or employee benefit plan during or for ten years after such conviction or after the end of such imprisonment, whichever is later, unless prior to the end of such ten-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clause (1) through (6) would not be contrary to the purposes of this chapter. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this section.".

SEC. 9. Subsection (b) of section 504 of title 29, United States Code, as amended, is amended to read as follows:

"(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.".

SEC. 10. Subsection (c) of section 504 of title 29, United States Code, as amended, is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents a labor organization or an employee benefit plan or who provides other assistance to such organization or plan, concerning the establishment or operation of such organization or plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment.".

SEC. 11. Section 504 of title 29, United States Code, as amended, is amended by adding at the end thereof the following:

"(d) Where any person, by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, upon the filing of an appeal of that conviction, any salary which would be otherwise due him by virtue of said office or position, shall be placed in escrow by the individual employer or organization responsible for payment of said salary. Payment of said salary into escrow shall continue for the duration of the appeal or for the period of time during which said salary would be otherwise due, whichever period is shorter. Upon the final reversal of said person's conviction on appeal, the amounts in escrow shall be paid to him. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization who was responsible for payments of those amounts. Upon final reversal of said person's conviction, said person shall no longer be barred by this statute from assuming any position said person was previously barred from.".

SEC. 12. The title of section 1136 of title 29, United States Code, is amended to read as follows:

"§1136. Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related Federal laws".

SEC. 13. The first full paragraph of section 1136 of title 29, United States Code, is amended by adding the following at the beginning of said paragraph:

"(a) COORDINATION WITH OTHER AGENCIES AND DEPARTMENT.—".

SEC. 14. Section 1136 of title 29, United States Code, is amended by adding the following subsection after subsection (a):

"(b) RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.—The Secretary shall have the responsibility and authority to detect and investigate civil and criminal violations related to the provisions of this subchapter and other related Federal laws, including but not limited to the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this subchapter and other related Federal laws.".

Chairman ROTH. Senator Rudman.

Senator RUDMAN. I don't have an opening statement. Thank you, Mr. Chairman.

Chairman ROTH. I am pleased to welcome Senator Nickles who is with us today and I believe is chairman of the subcommittee that has jurisdiction of labor, that has jurisdiction over 1785, which I was pleased to join Mr. Nunn in sponsoring.

Senator Nickles.

Senator NICKLES. Thank you, Senator Roth.

I appreciate the invitation to participate today and also appreciate very much the cooperation that you and your staff and Senator Nunn and Senator Rudman have given us in working together both on 1785 and also on the Longshore Act which the Labor Subcommittee has recently marked up and sent to the full committee. I think on S. 1182, the Longshore Act, as we have addressed it and addressed many of the concerns that were made in this committee earlier this year, we have tried to eliminate or amend many areas of the current law which have led to abuses on the waterfront and workers' compensation area.

This subcommittee was instrumental in bringing those abuses to the forefront. I am also pleased to announce the Labor Subcommittee will be holding hearings both on the ERISA and ERISA fiduciary responsibilities and the Landrum-Griffin aspects of 1785, the Labor Management Racketeering Act of 1981 on January 26 and 28 of next year. The need for these hearings has been evident because of the proceedings before this permanent subcommittee. It is my belief that by enacting changes in Longshore, ERISA, and Landrum-Griffin into law, it will be a tremendous step toward eliminating corruption which has been uncovered during these past hearings.

It is a pleasure to be with you and I compliment you and your staffs and also the people who are participating today for your assistance and efforts in trying to make a cleaner and better, healthy environment for all people.

Chairman ROTH. Thank you for being here, Senator Nickles.

Senator NUNN. Mr. Chairman, just let me add my thanks to Senator Nickles for being here. He has participated as much as his schedule would possibly allow in all our hearings. He has made a great contribution to them. I think it is a very positive step when the legislative committee chairman also participates in investigative hearings. It makes the job of trying to convert the product of these hearings into legislation much easier and I thank Senator Nickles for your cooperation.

Senator NICKLES. Thank you.

Chairman ROTH. Mr. Kirkland.

STATEMENT OF LANE KIRKLAND, PRESIDENT AFL–CIO; ACCOMPANIED BY RAY DENISON, LEGISLATIVE DIRECTOR; AND LAURENCE GOLD, SPECIAL COUNSEL

Mr. KIRKLAND. Thank you, Mr. Chairman.

Mr. Chairman, Senator Nunn, and members of the subcommittee. My name is Lane Kirkland. I am president of the American Federation of Labor and Congress of Industrial Organizations. With me today is our legislative director, Ray Denison, and special counsel, Laurence Gold.

My purpose in appearing before this subcommittee is to state that with only two narrow qualifications, the AFL-CIO supports the enactment of S. 1785. We have concluded that, on balance, the bill furthers both the public interest and the best interests of the trade union movement.

We did not reach that judgment lightly.

S. 1785, as we understood it, provides in essence as follows: First, that an employer payment to a union representative of $1,000 or more and the receipt of such a payment, now made unlawful by 302 of the Taft-Hartley Act, shall henceforth be treated as a felony rather than a misdemeanor. Second, that the list of disqualifying crimes stated in the Landrum-Griffin Act and in ERISA shall be enlarged to include felonies that involve a breach of union or benefit fund trust. To use the proposed statutory language, conviction of a felony that involves the misuse or abuse of union or benefit fund offices or employment would result in disqualification from union and benefit fund position.

Third, that disqualification shall be as of the date of the trial court's judgment rather than as of the date that judgment becomes final with the proviso that an individual who appeals and prevails shall be paid his lost salary which has been held in escrow pending the appeal, and the disqualification lifted. Fourth, that the scope of disqualification shall be broadened to preclude the holding of any union or benefit fund position.

And fifth, that the period of disqualification shall be 10 years rather than 5 years.

Our canvass of the applicable law shows that the present Landrum-Griffin and ERISA disqualification provisions are substantially more stringent than those that apply to individuals who hold positions in other organizations. We accept with equanimity that evident inequality. The trade union movement's high purpose is to forward the best aspirations of working people.

Union office is a calling, not a business. The morals of the marketplace will not suffice. Those who enter that calling are, and should be, held to a higher standard. If a person holding union office takes an employer payoff for a substandard contract, misuses the right to strike for his own benefit, or pilfers from the union treasury, that person does not simply stain his own honor. He tarnishes the bright efforts of the scores of men and women who have labored to create and maintain organizations worthy of the members we are privileged to represent and of society's good judgment.

There is much in theory to be said for internal union discipline as the proper response to misconduct by union officers. Democracy requires free trade unions, not State-dominated unions. Thus, one of our paramount responsibilities is protecting our institutional autonomy. Permitting the government to set the terms of union office is a substantial threat to that autonomy. But, the interest in preventing government interference is not our only interest, nor is every threat to that interest of the same gravity.

Passage of the Landrum-Griffin Act marked a new stage in the Federal Government's regulation of unions. That act granted the Labor and Justice Departments far-reaching authority to supervise internal union affairs. Not only is the applicable Federal criminal law wide ranging, it has been vigorously enforced. Thousands of hours and millions of taxpayer dollars have been spent looking into every aspect of union affairs. The FBI, the Justice Department, the U.S. attorneys, the strike forces and the Labor Department have pushed both the Federal, criminal laws and the investigatory powers those laws create to their very extremes. That has been true in Democratic and Republican administrations alike.

Indeed, every national union at which a finger of suspicion has been pointed has been subject to thorough grand jury investigation. Those investigations normally cover every book and record, every expenditure, every voucher or the lack thereof, every meeting, every trip, and every other aspect of the union's affairs. The Federal prosecutional forces have immense authority to get at the facts. That authority has been used without stint. I believe that such investigations have been repeated with regard to local unions.

For the past 20 years, the AFL-CIO has sought to orient itself to a course that takes proper account of the new order. The most perplexing problem has been whether we should attempt to run a full scale private law enforcement system parallel to that run by the Federal Government.

So long as there was little or no applicable law, we had a plain obligation to do the best we could in this regard, no matter what our doubts on the efficacy of our efforts; an obligation we strove to fulfill. But Congress judgment to turn the full power of the Federal investigators and prosecutors to defining, ferreting out and bringing to book wrongdoing by union officers has brought our own limitations into sharp focus.

We simply do not have the resources—the trained manpower, the subpena, the grand jury, the authority to uncover and punish perjury, the due process trial procedures that settle with authority questions of innocence and guilt and the effective sanctions to punish the guilty. We have learned through hard experience that the allegations of criminal wrongdoing everyone supposes to be well founded do not always stand up when all the facts are brought out. We have also learned that occasionally the union officer, one would unhesitatingly vouch for, can suddenly plead guilty to a serious crime.

Neither the adage that where there is smoke there is fire nor its converse—that where there is no smoke there is no fire—has proved a sound guide for our efforts at internal regulations.

The lesson we draw from the foregoing is the one that George Meany stated during the debate on the proposal eventually enacted as the Civil Rights Act of 1964. The question he addressed was whether title VII of that act should make unlawful discrimination by unions as well as discrimination by employers. His unequivocal answer was:

> The leadership of the AFL-CIO, and of the separate federations before merger, has been working ceaselessly to eliminate prejudices. * * * We have come a long way in the last 20 years—a long way farther, I might say, than any comparable organization. * * *
>
> But we have said repeatedly that to finish the job we need the help of the U.S. Government.

We are idealists enough to wish there were no such need, but we are realists enough to know that in an imperfect world there are occasions that call for use of the criminal law. One such occasion is corrupt action by union officers.

The trade union movement can only be strengthened by law enforcement that dislodges those with a criminal bent who may find a toehold in our structure. One of the benefits Government provides is the protection of the law. As spokesman for organized labor the AFL-CIO asks for that protection, emphasizes that the trade union movement sees such protection as a benefit, and pledges its cooperation in a joint endeavor with the Federal Government to maintain the hard-earned honor of our institutions.

It is simple enough to state support for good morals and opposition to wrongdoing. But we do not content ourselves with these easy pieties. The consequence of recognizing that the Government has a legitimate police role to play is the obligation to support fair-minded legislation that provides the authorities the wherewithal to do the necessary job. We do not shrink from that obligation. I have already outlined S. 1785's provisions. By and large, the proposals fill recognized gaps in the present law and do so in a rational manner. The bill deserves and has the AFL-CIO's support.

By far the most problematic step S. 1785 takes is to provide that disqualification from union or benefit fund office or employment takes effect on the trial court's judgment that the defendant is guilty of one of the enumerated crimes rather than after the appeals from that judgment have run their course.

The Federal Reporter shows that such appeals may be meritorius. And it is not a small matter for an individual who has over the years been a colleague in arms and who continues to maintain his innocence to be turned out of his position. But the disqualification issue is, we have come to believe, distinct from the ultimate issue of guilt or innocence. There is no infallible procedure for recapturing a past event and applying a general rule of conduct to the participants. Not even our elaborate system of appeals is foolproof.

Nonetheless, with full recognition of the perils, at a certain point the information available requires a prudent person to act. We cannot gainsay that a jury or trial court verdict, reached after a full trial, that the defendant is guilty of a serious crime—particularly of a crime involving a breach of union or benefit fund trust—is sufficiently reliable information to justify removal from union or benefit fund office. There is force in the contention that in determining how to act in the world of practical affairs such a verdict tilts the balance against the presumption of innocence.

This is a hard rule; one which may be unjust in particular applications and which raises troubling civil liberties issues. The alternative, however, raises even more troubling questions for the continued good health of the trade union movement. Torn as we are between these concerns, we believe that our obligation to the membership and the integrity of our organizations must be put first. The sponsor's decision to provide that the convicted defendant's salary will be held in escrow and paid to him if his appeal succeeds does tend to alleviate the harshest consequence of this suggested change in the law.

Before turning to the two aspects of S. 1785 that we question, I wish to note two points of concern that are related to, but are not caused by, the bill itself.

So that there is no misunderstanding, I wish to stress that we accept tight regulation not because on a comparative basis there is a case for such regulation, but because the rules comport with our own sense of what is right. Human weaknesses and the corruption of the spirit are constants. The labor movement is not perfect, neither are those who serve it. The same may accurately be said of all other sectors of our society and of their leadership.

In this past Friday's New York Times, a page 1 headline stated "Head of Nassau College, 4 Others Indicated on Charges of Corruption," and a page 12 headline stated "Price Fraud Laid to Tulsa Oilman. Overcharges Are Estimated at $2 Billion to $4 Billion on Violation of Controls." I could extend tnat list indefinitely.

Indeed, every measure shows that the integrity and the dedication of union officers, as a group, is superior to that of other groups. There are over 100 AFL-CIO national and international unions and over 50,000 local unions. With very rare exceptions the men and women who govern and staff these organizations are of the highest character. They sometimes must operate in milieus in which it is not easy to maintain one's standards; there are communities and callings in which keeping to the straight and narrow is an heroic enterprise. It is no wonder that a few succumb to temptation.

I would be less than candid if I did not also stress that we approach any increase in Federal prosecutorial power with trepidation. The criminal law is the Government's most stringent power over the citizen; such power should be used in a fair and balanced manner, with due respect for the principles of free association. That is not what we in the trade union movement find. I am told that the laws regulating unions are being used to bring indictments based on the prosecutor's theory of what the union's constitutions should say or what types of expenditures union members should be permitted to authorize. Such approaches strain the law beyond wise, reasonable or intended limits.

There are several reasons, having nothing to do with the merits, that explain why the issue labeled "union corruption" or "labor racketeering" is treated in a manner that suggests that the law addressing the subject is inadequate or that the law is not being enforced.

First, the inference is fostered that wrongdoing by a union officer is not evidence of an individual's weakness but an attribute of the labor movement. While bankers, businessmen, government officials and others are judged on their individual merits, union officers are judged according to the worst examples. I believe I speak for all my brothers and sisters when I say that I deeply resent being treated in that fashion. Corruption is always and inevitably individual, not institutional.

Secretary NUNN. Mr. Kirkland, let me say just there if I can interrupt you, we have a title in this bill I think recognizes the fundamental principal you just articulated. We call this the Labor Management Corruption Act. The next witness will be testifying about problems that have been very prevalent on the management end of tne waterfront and the indictments on the waterfront and the ILA did not just include union officials. They also included numerous people in labor management. I certainly recognize the principle you express.

Mr. KIRKLAND. Thank you.

Second, there are politicians and businessmen who have no use for the labor movement because free, vigorous and aggressive unions threaten their privileged position or profits. These individuals seek to beat us about the head with any stick that is handy. They view wrongdoing by a union officer as a public relations opportunity and exploit it accordingly.

Third, there are law enforcement officials whose authority and budget depend on sustaining the illusion that the union movement is corrupt. That is a convenient allegation because it does not require proof in a court of law, but only repetition in congressional budget hearings and in off-the-record session with journalists.

So far as they are concerned, an investigation of a union that produces no evidence of wrongdoing is, by definition, a whitewash. By the same token, they feel a need to stretch the criminal law to cover what is at most a civil wrong so that they can justify their present authorizations. And, of course, by their definitions any wrongdoing, including an isolated larceny, is evidence of the influence of organized crime. In short, there are law enforcement authorities who have no sense of proportion or of limit.

Nonetheless, we are willing to run the risks entailed in broadening the present law as proposed in S. 1785. Failing to do so would be to tempt even graver risks. We do so in the hope that, in this instance, and contrary to the norm, the grant of greater power will induce a greater sense of responsibility in the exercise of power.

There are, as I have noted, two aspects of S. 1785 that we believe should be reconsidered. The first concerns the proposed amendment to section 302 of the Taft-Hartley Act; the second is the proposal to increase the period of disqualification from 5 to 10 years.

Section 302 goes considerably beyond the prohibition of employer "payoffs" to union officers. That provision also regulates, in detail, a myriad of perfectly proper transactions having principally to do with the financing of joint labor/management employee benefit funds. The web of rules that has emerged is both technical and complex and those rules are also in a constant state of flux. For example, this term, 35 years after the provision became law, the Supreme Court will decide whether the District of Columbia Circuit Court of Appeals was correct in deciding that section 302 sets limits on the pension eligibility rules employers and unions may set through collective bargaining.

Plainly an error in making one's way through this legal labyrinth that has nothing to do with under-the-table employer payments, should not be treated as a felony. The intended scope of the bill is not clear. We would hope that the sponsors would include language that draws a rational line between the matters covered by section 302 that are to be dealt with through the criminal law and those that are to be dealt with through the civil law.

Senator NUNN. Mr. Chairman, if I could interrupt again on that, we have that point under advisement now. We will be asking both the Labor Department and Justice Department their views on that particular section.

We do take note of your feelings on that subject and we will be looking at it very carefully.

Mr. KIRKLAND. Very good.

We believe that the proposed uniform 10-year disqualification period goes too far. If it were certain that the provision would apply only to those who, on an objective measure, deserve the epithet "racketeer" there would be no cause for just concern. But that is not the case.

We know that individuals who, in their youth and ignorance, commit a single series offense and individuals who after years of honest work give in on one occasion to temptation, as well as individuals who commit numerous wrongs, will be affected.

There are situations that come to my mind in which I would agree that a 5-year disqualification would be insufficient. But I suggest that both reason and human feeling support the view that there are also situations in which a 10-year disqualification is too severe. It is, therefore, our view that the statue should provide a necessary measure of flexibility by authorizing the trial judge on conviction of one of the enumerated crimes to set an appropriate disqualification period of not more than 10 years.

Throughout organized labor's history, there have been racketeers who have sought to prey upon, and to misuse, unions for their own benefit. They are not part of the trade union movement. They are our natural enemies. With the help of Congress—in particular this subcommittee and the labor committees—and of the law enforcement authorities, I am confident that we can succeed in keeping the trade union movement free of such corrupt influences.

Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Mr. Kirkland.

First, I would like to express my appreciation and I am sure that of the entire subcommittee for your strong support for the legislation in question.

I know that it raises many problems and I want to say that I am one Senator that strongly believes in an independent labor movement. I think recent developments in Poland, perhaps more than any other recent event, have underscored the importance that such a movement be truly independent and not state dominated. So, I must say I appreciate your support and it does raise some very difficult questions as to the proper relationship between government and an autonomous labor movement.

I would also like to say that I very strongly agree with you that there is a tendency too much in this country to judge an organization by a few bad apples. That wherever there is human activity, whether it be church, private, or government, unfortunately there are also some who will not live up to the code of ethics that society has a right to demand.

The labor movement in that sense is no different and it is unfair for it to be condemned of either a few or even some organizations that may not meet your or my standards.

I might say that is a problem we have in the Congress as well as in the private sector. I, for one, am concerned that too often Members of Congress are ridiculed and characterized by the doing of a very few. I think it is not fair in any of these instances. So I think your statement is well taken.

I would also say that I think it is important as far as possible for an independent organization to be self-disciplined The less we depend on government involvement I think the better off the organization is, whether it be labor, business, or Congress.

I recognize at the same time probably one of the most difficult things to do is to judge one's peers. We find that rather difficult here in the Senate, and I can appreciate your problems there. But, again, I want to say we appreciate the fast that you are supportive of the efforts to develop some legislation to strike a better balance.

Mr. Kirkland, in response to our recommendations at the waterfront corruption hearings, the National Association of Stevedores enacted a code of ethics, as I understand it, to clean their own house. And this code of ethics would create sanctions against the members who participated in corrupt activity.

We find this very positive because the very nature of corrupt labor practices creates a situation that is capable of being adequately addressed only if both labor and management vigorously attempt to clean their own house.

I was wondering whether the AFL–CIO has such a code of ethics and, if so, whether it would deal with corrupt labor practices?

It is my understanding at least at one stage or one time there was, I believe, a committee on ethics as well as the code.

Mr. **Kirkland**. That is correct. Back at the time of the AFL–CIO merger and, in fact, prior to the merger, there were actions taken by the respective separate federations in particular cases. At the time of merger, there was included in the Constitution a provision declaring that the Federation has the responsibility to maintain itself free of corrupt influences. And when the code of ethics was developed, there were six or seven separate title heads or subject matters addressed by those codes.

I personally was involved in the preparation of one or two of them relating to good practice and good administration of health and welfare funds which were then beginning to develop on a major scale, fiduciary responsibilities of union officers, proper accounting practices, et cetera.

Those were distributed throughout the labor movement. They were declared, they were approved by our executive council and they were designed to supplement that broad responsibility set forth in the Constitution.

As you well know, the AFL–CIO proceeded against several of its affiliates under the terms of that constitution and with the result that several were expelled.

Those codes remain in force, I think that responsibility remains in force. There are, nevertheless, certain aspects of the capacity to effectively discharge that responsibility that I think have been affected by subsequent events.

The adoption of the Landrum-Griffin Act through the Federal Government undertook to exercise a broad and sweeping responsibility for the policing of our organizations presented us with a dilemma.

That is the dilemma of undertaking to run, on what evidence or facts or rumors or hearsay that we had at our disposal, a parallel simultaneous procedure against the organizations or affiliates, where the Federal Government was simultaneously proceeding, opening up what I would regard as a very unfortunate consequence, the possibility of the two procedures arriving at contrary findings.

Second, the authority vested in the AFL–CIO directs itself to affiliates, not to individuals. We have no authority to proceed against an officer of an affiliated union directly. We can only proceed against the affiliate. And so we have a system whereby we have nothing short of execution. It is as though you had capital punishment as a punishment for every rank of crime.

We are left with only the choice of expelling the unions from the entire body.

As I say, I firmly believe, no matter how many cases might be found in a particular union, inherently I am convinced that human frailty is individual and not essentially institutional.

That, I think, is a problem and in some cases it has not proven effacacious. We have had organizations thrown out on their own, without the constraints or the pressures or influence of the trade union movement.

Third, we are totally devoid of the basic essential tools for the fair determination of facts. We do not have the power of subpena, we do not have the power of compelling testimony under oath. We do not have all of the investigative tools that are well known to be in the possession of the police, including electronic surveillance, what have you.

We are then forced to rely upon evidence that is developed from other quarters, reports in the press, so forth, without any way of actually positively determining the facts.

Nevertheless, we believe and acted upon that principle during the period prior to the enactment of Landrum-Griffin that we had a responsibility and given all those problems, within the limits of our power, we had a duty to self-police and we did so self-police.

I believe if the law did not now almost preempt the field with all of these tools and with all of these resources, I believe that we would still bear that heavy responsibility and would have to do that. But it is extraordinarily difficult, and I think holds the potential for great unfairness and unfortunate results, to attempt to run a dual or parallel process.

So we welcome, as I say in my testimony, anything that will insure that the process is perfected and achieves the results. We wish to get the enemies of the trade union movement out of the trade union movement and we are not too particular about who gets the credit.

Chairman ROTH. In a sense, we have a parallel situation in Congress because I feel that we as Members of the Senate have an obligation to self-discipline anyone who violates our code of ethics despite the fact there can be legal remedies being pursued at the same time. I have to admit there are some of the problems you raise that you don't want one necessarily to prejudice the other because the standards are not necessarily the same. I was interested——

Mr. KIRKLAND. May I interrupt?

Chairman ROTH. Yes.

Mr. KIRKLAND. There is one difference. I do not believe that the law, in the case of a Member of Congress, provides for his expulsion upon conviction. It does with respect to trade union officers. We support that and we believe that fulfills the objective in the fairest possible way.

Chairman ROTH. That is correct. Only the Senate itself can take that action.

Going back to your observation under your code of ethics that only expulsion from the organization is within the jurisdiction, I have to say I have sometimes wondered if it wouldn't be better to try to uproot those responsible because, in a way, innocent people who are members and good trade members of that organization suffer by the organization being taken out.

It is for that reason it would strike me there might be some merit to be able to take action against the individuals. That comes to our attention, for example, when members of the union movement take the fifth amendment in connection with their fiduciary relationships. It in some ways would appear to be very helpful if the union were to be able to take some action as a result.

Mr. KIRKLAND. May I just say a word about that?

Chairman ROTH. Yes, sir.

Mr. KIRKLAND. I don't want to leave the impression that our affiliates ignore or neglect in any broad degree their responsibilities to act where they have the power with respect to individuals.

I believe by and large the record of our affiliates is very good in that respect. They do move where they do have the power. Their constitutional authority over their locals varies widely across the spectrum of relationships extending from peremptory powers to trusteeships to circumstances where local unions for historical reasons have almost total autonomy and there is no constitutional authority.

Where the authority exists, I think the record by and large has been very good. As an officer of the AFL–CIO, I have no direct authority over the affiliated international unions—they have autonomy under our constitution. That is the way the trade union movement was created and developed and I think that is the way our affiliates prefer to remain. But I do have direct authority as the chief officer of the parent body over subordinate bodies, and in those cases where I have that power, we do move directly and promptly.

Chairman ROTH. If we can turn just a moment to a different area, as you have properly said, the Government does play a primary role in policing labor management corruption.

One of the common complaints we receive from the law enforcement people is that they don't receive as great assistance as they think they should from either labor or business in investigating these matters. Not passing judgment on that complaint, but I wonder, could the AFL–CIO set up a mechanism for close coordination and cooperation. Do you feel it would be helpful to have some central contact point, for example, between the Federal Government and the AFL–CIO in these areas?

Mr. KIRKLAND. Senator, I would absolutely welcome that.

Chairman ROTH. Very good.

Senator RUDMAN. We will just have to find out where that central point is, Mr. Chairman. We have been trying to find out for the last 3 days.

Chairman ROTH. I think that is something——

Mr. KIRKLAND. We are more often victimized by disarray on the Federal side.

Chairman ROTH. To eliminate this from the area of dispute, could I suggest that maybe some of our representatives of law enforcement contact your office and make arrangements to establish coordination.

My time is up.

Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

Before I start questions, Mr. Kirkland, let me just express my appreciation for you coming forward today with a very frank and candid statement. Of course, it is always a great pleasure to have the AFL–CIO endorse a piece of legislation. I know in endorsing this legislation with a couple of reservations that it has been a very difficult job. I think it has been a job that required a great deal of courage and leadership on your part and the part of your executive board. I think it is a step forward.

I think word by your testimony today goes out to the American people and to your own membership that the AFL-CIO is led by men and women of courage and dedication and ambition. I think the word also is going out in a strong and forceful way that there is no room in the AFL-CIO for people who have been convicted of various crimes and that there is no room for people who are affiliated with organized crime.

I think you correctly identified them as the enemy of AFL-CIO and enemy of the working men and women of America. I believe there is a very clear message and strong message and I thank you for it.

[At this point, Chairman Roth withdrew from the hearing room.]

Senator **Nunn**. Mr. Kirkland, you are trying to develop a standard constitutional amendment now that would help govern the use of union funds to help prevent abuse? Is that something you are considering?

Mr. **Kirkland**. Yes, sir. We have in operation a conference of secretary-treasurers of all of our affiliated organizations that meets periodically, with a number of operating committees, which devotes a great deal of its time to these questions and does prepare guidelines and standards for our affiliates and does its best in education, advice, and consultation to assure that they are fully abreast of the law and procedures and that they are trained and qualified to carry out their responsibilities under this law.

We do have as well conferences of trade union attorneys that address these issues and develop the recommendations for their principal and we will continue to press along that line and try to keep track of evolving law.

There seems to be a tendency, as I indicated in my testimony, occasions where efforts are made to sort of make new law out of existing law, which we sometimes disagree with.

I think it represents an excessive intrusion into the democratic judgment of an organization. And that also is one reason, one further reason, we would welcome a regular liaison with the law enforcement authorities of the kind that Senator Roth mentioned. But we will continue to do our best to develop guidelines and recommendations even to the point of recommended constitutional changes where that is necessary.

Senator **Nunn**. I think I understand the powers and authorities that the AFL-CIO naturally has as I understand what you testified to today.

Do you have the authority over your own State organizations; that is, if there is an abuse, serious allegation or certainly conviction of crime, you could move rather rapidly against, say, a State organization in Delaware, New Hampshire, or Georgia?

Mr. **Kirkland**. That is correct.

Senator **Nunn**. But when you get to your affiliated organizations, for instance, the ILA, it is a different story. What is your authority over affiliated organizations?

Mr. KIRKLAND. Our authority over affiliated organizations is to enter a complaint on good grounds for believing that they are subject to the corrupt practices evident thereto, hold hearings and from a finding of the committee, the executive council or of the council to proceed against their affiliation and to suspend or expel them from the federation.

Senator NUNN. Do you have the authority to go after not only the parent affiliate like the International Longshoreman's Organization, for instance, but also one of their local unions?

Mr. KIRKLAND. No.

Senator NUNN. You don't have the power over their locals?

Mr. KIRKLAND. No; we cannot go beyond the national. We can proceed against the national. We have no authority to proceed against the local.

Senator NUNN. For instance, one of the things that gave rise to this legislation—I am sure you are aware, is that we have had significant problems both in New York and in Miami.

In New York-New Jersey at one time there were national officers of the ILA that had been convicted but in Miami now there are still local officers that are holding union office that have been convicted of crimes.

There are four or five of them I know of that were convicted 2 years ago in September 1979. They are now still out on appeal and on each and every day they are still in those offices dealing in the positions of great power with the witnesses who have testified against them.

We are constantly getting complaints from witnesses saying we risked everything to go in and testify against the people and now we find ourselves for the next 2 years sitting down across the bargaining table with them. It is a rather uncomfortable position when you are on the labor side or on the management side. You could reverse it. And I think you probably could certainly appreciate that.

What you are saying though is that unless the ILA itself takes some action against that local, that the AFL-CIO cannot take action against the local. You have to go after the ILA?

Mr. KIRKLAND. We cannot go around the back of an international or national affiliate and proceed against the local of that affiliate. The basic principle, sir, is—well, to put it perhaps in an oversimplified way, the Federation is the creature of the affiliates and the affiliates are not the creatures of the Federation.

We act through conventions of those affiliates and through our executive council, made up of leading officers of those affiliates. That is the basis on which this Federation was founded and I believe it is the basis on which the affiliates desire to continue to operate.

Senator NUNN. So your power there in that particular instance would be really to go after the ILA naturally and take some expulsion against them, even though what it involved would be local primarily or just simply use your powers of persuasion; is that correct?

Mr. KIRKLAND. That is correct, sir. And the approach to it would be, first of all, to attempt to use quite persuasion. That has, I think, been effective to a degree. It may depend upon each individual union's constitutional limitations, in some cases on their power to move in a preemptive fashion. Some affiliates do not have trustee powers in their constitutions.

Those are the considerations that I think weigh heavily on our decision that we come down on the side of this type of legislation, which we believe to be of great help in dealing with these problems.

Senator NUNN. Concerning legislation, as I understand it, you are supportive of the effort to increase the penalty of Taft-Hartley payoff to a felony as part of the legislation; is that correct?

Mr. KIRKLAND. Yes, with the qualification that I stated, as long as it is clear that what we are talking about here is a matter of payoff, personal enrichment; again of an officer and is not just——

Senator NUNN. Technical violation?

Mr. KIRKLAND. That is correct.

Senator NUNN. We are going to take a closer look at that. You understand that that provision would apply equally to management and to union officials?

Mr. KIRKLAND. Yes.

Senator NUNN. Second, you are supportive of the effort to remove union officials and trustees upon conviction of certain offenses immediately at the time of conviction by the trial court without awaiting the final appeal?

Mr. KIRKLAND. Yes.

Senator NUNN. As I understand it, you also favor the language which expands the types of positions these individuals are capable of holding?

Mr. KIRKLAND. I beg your pardon, sir?

Senator NUNN. The expansion of the number of positions that the individuals are capable of holding on disqualification?

Mr. KIRKLAND. Yes.

Senator NUNN. The main reservation you would have now other than that section 302 technical provision which we are going to take a look at is the question of the 10-year bar rather than as I understand it you are avocating there be discretion in the Federal judge to go between the 5 and 10 years?

Mr. KIRKLAND. That is correct, sir. I simply cannot persuade myself that all cases are alike with that one 10-year bar. For all practical purposes. I think in democratic organizations, people must stand for office and be elected and the guarantees of fair elections are thoroughly incorporated in the Landrum-Griffin Act.

In most cases, it is almost academic once one is removed from office on any of these grounds. They are pretty much ruined as far as the trade union movement is concerned. I recognize there are exceptions and instances in which that might not be the case. But there is a considerable difference, I think, between a really hard-core case of a person who on examination one would say ought to be just removed from the body forever and one where it is a juvenile offense in an environment where Marquis of Queensbury rules don't always prevail, or an offense that had nothing whatever to do with his union position but is really irrelevant, a crime of passion or an encounter that had nothing whatever to do with his performance in the union office.

I think there ought to be some latitude for judgment in those cases.

Senator NUNN. I am sure the Labor Committee, when they are considering this legislation will take a look at both of those.

Just one other question, Mr. Kirkland.

We have had extensive testimony for several years about the problems with the Teamsters Pension Fund and I know and recognize the Teamsters Union is not a part of the AFL–CIO now but what you do in your own affiliate organizations, when it comes to your attention or hypothetically if it came to your attention that there was a very extensive problem of fraud and so forth in the pension funds that really had the potential effect of depleting the pension funds on which the rank and file depend, what kind of remedy does the AFL–CIO have in that situation if any?

Mr. **Kirkland**. If it is a national pension fund in which the national officers serve, it would be covered by the fact that we can proceed against an affiliate looking to expulsion. I don't think that is an effective remedy to the maintenance of sound practices in those jointly administered pension funds.

That is one of the reasons, we were one of the leading proponents of the adoption of ERISA and of disclosure laws and of measures designed to safeguard those funds. So in that area, we welcome the role of the Government in assuring the integrity of the pension and welfare funds.

Senator **Nunn**. Thank you, Mr. Chairman.

My time is expired.

Chairman **Roth**. Senator Rudman?

Senator **Rudman**. Thank you, very much, Mr. Chairman.

I, too, appreciate the candor of your statement as one of the principal cosponsors of this legislation. I think you have raised two very legitimate points here this morning that bear looking at. Certainly your point that there ought to be discretion in levying a 10-year suspension from one's life's work is worthy of further exploration and I certainly join with Senator Nunn in saying that that ought to be looked at.

The entire scope of these hearings, of course, has dealt with something which I am sure is your concern as much, if not more than, the concern of this subcommittee; that is, the integrity of the funds contributed by hard-working union members, by their employers, in the whole area of their retirement and their pensions and obviously if the integrity of those funds is in any way affected, then that is certainly really a problem for you as much as it is for this subcommittee.

One of the areas that concerns me a great deal is the whole area of how we quickly and rapidly deal with those problems. The criminal process, the civil process, is and should be slow and cumbersome to protect people's constitutional rights and the line of questioning I want to follow is one in which I want to say at the outset, is one in which reasonable men can disagree.

I want to go back to a little ancient history. Really it is not so ancient. It is July 22, 1957, the Select Committee on Improper Activities in the Labor Management Field. The chairman was Senator McClellan. Serving on that committee were Senator John Kennedy of Massachusetts, Senator Barry Goldwater, a number of others, the chief counsel was Robert F. Kennedy. The principal witness that day was George Meany. Really at that time that committee was addressing some of the same issues we are addressing today.

I just want to read to you a statement of Mr. Meany and an excerpt from Mr. Reuther, and I am sure they are areas that you are familiar with.

In talking about duties of unions and this whole question of the funds and the fiduciary relationships of unions, Mr. Meany said:

> It is the firm policy of the AFL–CIO to cooperate fully with all proper legislative committees, law enforcement agencies and other public bodies seeking fairly and objectively to keep the labor movement or any other segment of our society free from any and all corrupt influences. This means all officials of the AFL–CIO and its affiliates should freely and without reservation answer all relevant questions asked by proper law enforcement agencies, legislative committees, and other public bodies seeking fair and objectively to keep the labor movement free from corruption.
>
> We recognize that any person is entitled in the exercise of his individual conscience to the protection afforded by the fifth amendment. We reaffirm our conviction that this historical right must not be abridged. It is the policy of the AFL–CIO, however, that if a trade union official decides to invoke the fifth amendment for his personal protection and to avoid scrutiny by proper legislative committees, law enforcement agencies or other public bodies into alleged corruption on his part, he has no right to continue to hold office in his union. Otherwise, it becomes possiole for a union official who may be guilty of corruption to create the impression that the trade union movement sanctions the use of the fifth amendment not as a matter of individual conscience but as a shield against proper scrutiny into corrupt influences in the labor movement.

Then Mr. Reuther was quoted:

> When a member of the UAW holding either elective or appointive office chooses to use the fifth amendment, the matter is no longer purely personal, for such members holding of the union office immediately and inescapably involves the union as an organization in the matter.

I guess my question to you is simply this: We have witnesses before this subcommittee and other committees of the Congress, or before grand juries in regard to their fiduciary responsibilities in handling millions and thousand millions of dollars of hard-worked for money by the rank and file of the AFL–CIO or any other union and they hide behind the fifth which is fine from a constitutional point of view to avoid prosecution.

What responsibilities do you have, do you think, does your union have in terms of those people and what they essentially have done in terms of taking that privilege to protect themselves when it deals with the handling of union funds?

I just would like your response in light of those responses by Mr. Meany and Mr. Reuther.

Mr. Kirkland. The policy that was stated by President Meany is a simple recitation of the policy established by the AFL–CIO Executive Council. That policy still applies. It is an intricate question. It is not as simple as some would suggest.

Senator Rudman. Not at all.

Mr. Kirkland. I think the operative words are: To take it in order to shield one's self from a proper inquiry into one's fiduciary responsibilities. That I think is the operating language.

Senator Rudman. I agree with you. Those are the operative words.

Mr. Kirkland. I can conceive of other circumstances where it might be warranted.

Senator Rudman. Senator Nunn and I have discussed and only discussed with others the possibility of legislation in the area of just that, the fiduciary responsibility of union officers and other officers who in fact are testifying before committees and grand juries relating to funds which now approach the billions of dollars and whether or not we have some narrow road to travel to protect people's constitutional rights and yet protect hard-earned dollars of men and women that have gone into that fund.

I would like the opportunity to discuss that with you and your counsel in the future.

Mr. Kirkland. We would be very happy to, Senator.

Senator Rudman. I don't have any other questions for Mr. Kirkland.

Chairman Roth. Thank you.

Senator Nickles?

Senator Nickles. Thank you, Senator Roth.

I would just like to join our colleagues in welcoming your statement and also your support of this legislation. Other pieces of legislation are also before us. They are very relevant that deal with trying to eliminate some of the abuse. I certainly think Senator Nunn's comments were excellent when he stated and I would like to repeat those from my belief that the majority of the people who are union officers and officials are honest, hard-working people and I think it is certainly to your advantage, to our advantage and to the advantage of the working people of this country if we can take appropriate action against those and not have them put a black or tainted image on the entire labor movement and working people throughout this country.

I made that statement this past weekend when I was addressing a group of longshore and some labor officials said that they felt like the entire episodes before this subcommittee and the indictments that have been coming, the headlines have been tainting the Longshore Union as well as all organized labor.

That is not our intention. It is certainly, I think, possibly by passing this legislation and some of the reform measures we are trying to make in the Longshore bill, also in the ERISA bill, that we are working on, hopefully, will go a long ways toward correcting, I think a very much needed situation.

So we appreciate your help on this bill and we look toward your cooperation on the other measures that are before us.

Mr. Kirkland. We will look at those other measures, sir, on their merits.

Senator Nickels. Thank you.

Chairman Roth. Thank you, very much, Mr. Kirkland.

We again appreciate very much your being here today and we particularly appreciate the support of the union on the legislation in question.

Mr. Kirkland. Thank you, sir.

Senator Nunn. Thank you, very much.

Chairman Roth. The next witness is Tom Wilcox of the National Association of Stevedores.

Mr. Wilcox, will you raise your right hand?

Do you swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Wilcox. I do.

TESTIMONY OF THOMAS D. WILCOX, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF STEVEDORES

Chairman Roth. Thank you. Please be seated.

Mr. Wilcox, we have a copy of your testimony. You can either give it in its entirety or if you prefer, to summarize it. We will include it in the record as if read.

Mr. WILCOX. Mr. Chairman, I think I would prefer to read it.

Chairman ROTH. Thank you. Please proceed.

Mr. WILCOX. Mr. Chairman, members of the subcommittee, my name is Thomas D. Wilcox, and I am the executive director and general counsel of the National Association of Stevedores.

I appear here today in response to the letter of September 25, 1981, concerning further inquiry by the Permanent Subcommittee on Investigations into labor racketeering and management corruption and requesting testimony from the National Association of Stevedores. We understand that these hearings are a followup to your hearings in February of this year.

The NAS is a nationwide membership trade association whose sole purpose is to further and support the stevedoring and marine terminal industry of the United States. It is presently composed of 6 member companies and their subsidiaries, which are privately owned and do business on all four of the Nation's seacoasts, the States of Alaska and Hawaii, and the Commonwealth of Puerto Rico.

The NAS is a not-for-profit corporation organized under the laws of the District of Columbia and has tax-exempt status under 26 USC 501 (c) and under 29 D.C. Code 1005 (b).

The NAS has been in existence since 1933 but was largely dormant for many years. It was revitalized in 1973, and since then has grown to its present membership which represents approximately 80 percent of the industry. The NAS provides a forum and means whereby members can exchange ideas and discuss mutual problems and interests. The NAS represents the industry before the Congress, the Federal courts, and Federal departments and agencies. All activities are conducted within the parameters set by U.S. law. For example, exchange of information among members or any other activity can in no way restrict, limit, or monopolize trade or commerce.

The NAS does not engage in collective bargaining. Neither does it participate in the operation or management of any member company or group thereof.

The stevedore/marine terminal industry is a highly competitive industry, not only within a single port but also between competing ports. It has always been a labor-intensive industry and, with the advent of modern cargo-handling systems, it has become capital intensive as well.

The cost of workers' compensation under the Longshoremen's and Harbor Workers' Compensation Act is the largest expense a stevedore has after payroll.

Payments to a stevedore for services rendered to its customers are irregular at best and often nonexistent in the case of steamship line failures or refusals to pay. Such irregularity combined with prolonged nonpayment of invoices creates a severe cash flow problem for members of the industry.

The situation forces them to borrow money at high interest rates to meet weekly payrolls. Contrary to popular belief, a stevedore cannot pass on all of its costs to customers and many face financial problems daily. The increased costs to the stevedore of well-intentioned but ill-conceived social legislation add considerably to the financial difficulties of this highly competitive industry, and, if there is any major vulnerability the industry has, it is that of meeting its financial responsibilities imposed by law.

As in the case of any service industry, the stevedore is primarily selling its services, facilities, and labor. As the cost of supplying labor and providing for it increases through whatever device—contract, law or workers' compensation benefits—the stevedore's ability to compete is impaired.

The combination of increased costs demands an increase in efficiency to remain competitive. The challenge of the industry then becomes apparent: increase productivity, reduce costs, increase revenue. Accomplishing all three aspects of the challenge requires the cooperation of the industry's major source of production—the labor force.

Operation UNIRAC and the resultant indictments, convictions, and confessions, about which you heard in February, clearly indicate that there is crime on the Nation's waterfront. Some involved stevedores. Much did not. How much crime was not discovered is unknown, and whether the amount of crime, discovered or not, is extraordinary in comparison with other industries is also unknown.

Operation UNIRAC and your hearings demonstrated that concerted action by Federal enforcement agencies can be effective in ferreting out crime. UNIRAC's scope was awesome. Whether Operation UNIRAC and the potential for another such massive concentrated effort in the future will deter crime anywhere is problematic. However, if those who are convicted, or who confessed, are not adequately punished or are allowed to retain positions of power, be it as union officials or in competition in business with those who have committed no crime, then an Operation UNIRAC will probably not deter future criminal activities.

The role of any employer in detecting and preventing crime is limited. The role of an association or group of competing employers is even more limited because of the proscriptions on the antitrust laws against joint action by competitors.

For example, codes of ethics and expulsions from membership in associations must meet stringent requirements of the Department of Justice and the Federal Trade Commission. They must not restrict, limit, or attempt to monopolize trade within the full scope of the meanings courts have attributed to those words.

The potential antitrust liability of a trade association and its members inhibits significant group action in this regard. In addition, nonmembers of associations are not bound by association codes of ethics and are free to conduct their business in any manner they choose.

Nevertheless, the NAS has acted as promptly as possible on the suggestion of Senators Nunn and Rudman issued at the conclusion of the subcommittee's hearing last February, and has adopted a code of business ethics subject to the approval of the Federal Trade Commission.

We are grateful for the assistance rendered to us by Senator Nunn and subcommittee staff, and look forward to clearance by the Federal Trade Commission. A copy of the proposed code of business ethics is appended to this statement. I should add here that an association code of ethics is not the sole answer to the problems under discussion.

When a criminal proposition is placed before him, an individual employer on his own behalf can say, "No," and report the fact to the appropriate law enforcement agency. If an employer becomes aware of criminal activity, or activity thought to be criminal, the only recourse is to report it to the proper law enforcement agency. If the agency does nothing, or, if it does prosecute and lenient penalties are ultimately assessed, employers will become reluctant or disinterested in informing the agency.

Expulsion from a trade association may or may not be a deterrent, and the more important trade association membership becomes, the more the association comes under antitrust scrutiny if a member is expelled.

Employers have reported suspected cases of fraud under the LHWCA to the Department of Labor, but that Department has done little or nothing to investigate such reports or to prosecute offenders.

When reports of fraud, however well documented, neither lead to prosecution nor eliminate fraudulent claims, employers lose faith in the impartiality of government. We believe that swift action by those capable of taking action is an absolute must if anything is to be accomplished.

We also believe that increased and effective use of Customs Service agents could, not only expedite the movement of cargo across the Nation's waterfront, but could also help prevent cargo thefts.

The longer cargo remains on the piers the more susceptible it is to theft, and rapid customs clearance of such cargoes would aid in reducing the opportunity for theft. NAS member companies have taken action to prevent cargo loss and theft, including providing secure storage areas, hiring watchmen, instituting gate check-in and check-out procedures, and even using scales to weight containers moving in and out of marine terminals where NAS members are, in fact, terminal operators as well as stevedores.

It must be pointed out that all stevedores are not terminal operators, and not all control the terminal facilities to unload or load ships. One problem area here is the question of which law enforcement agency, at which level—State, local, or Federal—has jurisdiction over the particular crime.

Operation UNIRAC and your hearings disclosed that some waterfront employers, including some stevedore contractors, have been susceptible to illegal demands from some members of organized labor as well as organized crime. The question has been raised as to whether the stevedoring industry is subject to unusual pressures which make it susceptible to criminal activity, and, if so, what those pressures are and whether or not they can be relieved by changing Federal law.

As stated earlier, the stevedoring industry is highly competitive. There is competition not only between stevedores in the same port but also between stevedores doing business in competing ports.

The business of stevedoring is to provide the labor and equipment necessary to load and unload cargoes into and out of ships at ports and terminals in the United States. It was formerly labor intensive, and now because of technological changes, it is both labor and capital intensive. Although its revenues are high, its margin of profit is low because of extremely high direct labor and equipment costs as well as worker's compensation costs under the Federal Longshoremen's and Harbor Worker's Compensation Act.

Longshore labor employed by stevedores is referred to them daily mainly by the labor unions, and in most ports a stevedore has no choice as to the particular longshoremen who will work for him.

That choice is made by the unions, either through a hiring hall or by a union gang leader or foreman. The precise details vary from port to port depending upon the applicable collective bargaining agreements.

A major source of a stevedore's revenue is the steamship company to which it contracts its services. Competition for such contracts is fierce, and the goodwill or reputation of the stevedore, its productivity, and its costs are its legitimate tools in the competition.

Some contracts are for a specified period of time and some pertain only to one particular vessel or cargo. Most stevedore contractors are faced with fixed costs, including guaranteed labor costs, but stevedores have extremely variable sources of revenue.

The loss of one contract to a major customer may mean the difference between profit and loss for the year. Failure to pay invoices by steamship lines due to bankruptcy or other reasons contributes much uncertainty to the stevedore's revenue.

Untimely payment of invoices often requires the stevedore to seek short-term loans at high interest rates in order to meet its payroll and other obligations. In addition, there has been testimony to the effect that, when waterfront employment declines, workers' compensation claims increase, and the administration of the LHWCA by the Department of Labor almost guarantees that the employer will have to pay a claim regardless of its merit.

In such a situation, be it in the stevedoring industry or any other service industry, where a cooperative labor force is a key element to management's survival, that labor force has extraordinary powers.

When that power falls into the hands of an unscrupulous person who can manipulate labor and management to his own end, management is susceptible to enormous pressures. Such pressures could include worker slowdowns, wildcat strikes, demands for kickbacks, or any other special deals desired by the manipulator.

Another factor to be kept in mind is that a stevedore or marine terminal operator is legally responsible for the loss or damage to cargoes in his care and custody and must exercise due care to prevent any such loss or damage, paying the owner when cargo is lost or damaged.

No trade association can dictate or control the actions of its member companies, and certainly it cannot influence nonmember companies. It can, however, with member support, attempt to create an improved business climate. What organized labor can do to control the activities of the few within its ranks who abuse their union positions for their own ends obviously depends upon the organizational procedures of the unions involved.

Mr. Chairman, at this point, I am pleased to say that other actions by management can be taken—indeed, have been taken—to help prevent and detect crime on the Nation's waterfronts.

Two weeks ago, maritime employers in Houston, Tex., acting through the West Gulf Maritime Association, and in cooperation with the FBI, the Port of Houston Security Police, and the Houston Police Department established a $10,000 fund from which to pay rewards to persons giving those law enforcement agencies information which leads to an indictment or conviction of waterfront-related crime. Informants give information directly to the law enforcement agencies.

Later, when there is an indictment or conviction and without disclosing the informant's identity, the agency involved recommends the amount of the reward. The money will then be drawn from the reward fund and given to the law enforcement agency for payment to the informant.

The fund is a first step, Mr. Chairman, in one port, and I hope that others will follow Houston's lead.

Senator NUNN. Mr. Chairman, I just want to make reference to this in terms of the leadership that the National Association has given in this respect and in respect of the ethics code being adopted.

I have met with them on several occasions and my staff has. I went down and met with the National Association when they were here in Washington for a meeting after our hearings.

Senator Rudman, I think, has been very involved also in meeting and talking to the national association and we certainly recognize that there is no magic formula here. As Mr. Wilcox said, this is not going to cure all the problems but I do think this is a strong step in the right direction as well as the adoption of the code of ethics and I do believe it will not only help prevent this kind of corruption from taking place but I think it will lead to a sense within the association that the association itself stands behind honesty on the waterfront. I believe over a period of time that can have a profound effect.

Mr. WILCOX. We wholeheartedly agree with the statements made during your February hearings that prevention of racketeering and corruption requires the efforts of several parties: Management, labor and law enforcement authorities.

The NAS has taken initial steps to fulfill its responsibilities, and has adopted a code of business ethics. That proposed code—and it can only be a proposed code at this time—is now before the Federal Trade Commission Act. It has been at the FTC since September 9, 1981, and is likely to remain there for some time because industry self-policing arrangements run contrary to the antitrust laws favoring free competition.

As stated earlier, the more valuable trade association membership becomes, the more susceptible to antitrust action the association becomes if it attempts to expel member companies.

Chairman ROTH. Would you yield there?

You say you expect the code to remain at FTC for some time.

What do you mean by some time?

Mr. WILCOX. The procedures at the Federal Trade Commission are exceedingly slow as they are in most regulatory agencies. There is a debate now going on between ourselves and the Federal Trade Commission staff as to whether expulsion upon conviction of a crime without a formal hearing is an unfair business practice.

We tend to believe that if the man is convicted of the crime that there is no need to go any further. The Federal Trade Commission says, well, maybe you should give them a hearing first. We have not yet had an official ruling from the Federal Trade Commission. We have had some communication with the FTC Staff and subcommittee staff. I have also talked with several Trade Commission staff members.

Chairman ROTH. Let me suggest that perhaps we ought to call them forward and find out what they can do to expedite their decision, whatever that may be.

You may proceed.

Senator NUNN. I think that is an excellent idea, Mr. Chairman. I think we ought to have staff, majority and minority, contact the FTC and ask them what they intend to do in this case and get their general rules and procedures.

Chairman ROTH. I am so instructing our staff director.

Mr. WILCOX. That would be very helpful.

There is the Justice Department we have to be concerned with as well.

In addition to the expulsion problem, if an independent industry code provides that illegal kickbacks or similar reductions in regular charges are prohibited, the group is subject to a charge of illegal price fixing. These problems face all trade associations, and actually inhibit management from meeting its responsibilities in the matter under consideration here.

The NAS is most pleased that Senators Nunn and Rudman jointly recommended amending the Longshoremen's and Harbor Workers' Compensation Act to help eliminate some of the abuses that act invites; abuses which this subcommittee has investigated and which were revealed by Operation UNIRAC.

A bill, S. 1182, which Senator Nunn, Senator Nickles, and others are cosponsoring and which has been considered by the Labor Subcommittee of the Committee on Labor and Human Resources, is supported by the Reagan administration, and as Senator Nickles indicated earlier, it has been voted out of the subcommittee into the full committee.

In addition to making substantive changes to an overly generous worker's compensation law, S. 1182 would correct the act's provisions which invite fraud and abuse in the area of physician selection, physician removal, false or fraudulent statements or representations, and the presumption of entitlement to benefits simply because a claim is filed.

The statutory penalties would be increased from misdemeanors to felonies and the monetary penalty substantially increased.

Under section 31 of the bill, suspected fraud cases can be taken directly to the appropriate U.S. attorney rather than reported to the Department of Labor under the present cumbersome procedure.

Active support of S. 1182 by members of this committee and the full Senate will help its passage and hopefully correct some of the problems we are discussing today.

Mr. Chairman, there was earlier discussion on legislation which was S. 1163 and which is now 1785, the Labor Management Racketeering Act of 1981.

The association strongly supports that bill, especially its provisions which would increase the penalties for violations of the Taft-Hartley Act, even though those penalties apply both to management and labor.

The NAS also supports the immediate suspension from any union office of union officials convinced under the act. We believe that there is adequate redress, through restoration to office and of lost pay, for any suspended official whose trial court conviction may be later reversed on appeal.

Our members inform us that it is very difficult and uncomfortable to be compelled to do business with a convicted union official who still retains a position of power in a union after his conviction for labor racketeering.

It does not matter whether or not the employer was a witness at the trial. The effect is the same. We urge early enactment of S. 1785 and, again, as Senator Nickles said, I believe there will be hearings on this measure in early January.

Finally, Mr. Chairman, with the assistance of Senator Nunn and subcommittee staff, the NAS has been in contact with the FBI and a procedure has been established for reporting criminal activity to the FBI in a manner which will permit some central coordination.

A copy of a letter dated October 19, 1981, from the Assistant Director, Criminal Investigations Division, is appended to this statement and will be sent to all NAS member companies.

This concludes my prepared statement, I would be happy to answer any questions the subcommittee may have.

Senator RUDMAN. Mr. Chairman.

Chairman ROTH. Yes.

Senator RUDMAN. Might I just say at the conclusion of his testimony that I think it is essential that we follow your suggestion and find out just what the FTC involvement is in this particular matter.

I know that part of the code. It would take a convoluted determination of what the intent of the Congress was and if there is ever an example of government being on people's back, this would have to be it.

This group is responding to a request by congressional committee and to apply that section of the code to some chance of a happening which is so remote as to defy imagination. I would like to find out from those staff members just who is doing this and essentially why they are doing it, how long it is going to take, because this group has taken an extraordinary step in response to a request by this subcommittee and we now find it is being thwarted by another agency of the Government and, frankly, I would like to find out why.

Chairman ROTH. As I indicated, I share those same concerns, Senator Rudman.

It is but another example where government seems to be working against itself. So that we have instructed the staff director to make inquiry immediately.

Let me ask just a couple of questions, if I might.

Again, going back to what Government is doing, in February, the subcommittee heard testimony concerning the ILA use of the fraudulent injury claim as a means of extorting payment from a stevedore manager.

I wonder what your membership experience has been with the Department of Labor, particularly in the months since those last hearings.

Mr. WILCOX. Until Secretary Donovan's testimony last week, we really had no change in the Labor Department's position as to what they would do when fraudulent claims were reported to us.

It was a very cumbersome procedure. If management suspects that there is a fraudulent claim or even has filmed evidence of it, it would have to take the evidence to the local office of the Department of Labor, say, in New York. The Deputy Commissioner would take a look at it and then it would be forwarded to the national office here in Washington. They would take a look at it and then it would be passed from there through the Solicitor's Office to the Office of the

Inspector General and after they would take a look at it, it would be mailed or somehow delivered to the Department of Justice, working its way all the way down to the U.S. attorney. By the time you go through nine reviews, the whole case has been lost. Under S. 1182, that entire procedure will be bypassed and if an employer has evidence of a fraudulent claim, he would go directly to the U.S. attorney with whom by section 31 other agencies are instructed to cooperate. So he could bypass the whole chain of delay.

Chairman ROTH. I am going to instruct the staff again, both on the majority and minority side, that we discuss this with the Department of Labor and see what steps can be taken to expedite the remedy of the procedure.

Mr. WILCOX. We were most heartened with Secretary Donovan's testimony last week before this subcommittee because to us, it indicates a total reversal of the Department's policy.

Chairman ROTH. We too, I think as a panel, were very much encouraged by what he said. One of my principal concerns however is that those policies become implemented down through the bureaucracy and as I indicated then, we shall hold hearings at some later date after a reasonable period of time has passed to determine what corrective action has been taken, particularly in insuring that the directive and change of policies are followed through by those who have the day-to-day decisionmaking.

Mr. WILCOX. That is the problem that we have lived with for years. What is said here in Washington is not necesarily what you hear down in Dallas, Houston, or some other place.

Chairman ROTH. As I said, it is my intent that this subcommittee will follow through on these kind of matters which leads me to my next question.

In your opinion, what will occur if this subcommittee or the FBI diminish their focus on waterfront racketeering?

Mr. WILCOX. I think if it were known or suspected that any law enforcement agency or was not absolutely serious, in particular, that the Bureau after its massive experience in Operation UNIRAC considered UNIRAC a one-shot effort, and that things were going to go away then, within a short period of time we would most likely be back to where we were before UNIRAC. I know after talking to some of our members that many people are still convinced that there are electronic surveillance devices around. They don't know where. And I think that plus the cooperation that we have gotten from the FBI may itself be a deterrent. But if you remove that deterrent or make people think it is not there, then I think we will go right back to where we were before.

Chairman ROTH. Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

Mr. Wilcox, you mentioned up until Secretary Donovan testified last week that you noted no real change in the Labor Department position even after all our hearings.

Mr. WILCOX. Yes, sir.

Senator NUNN. Have you gotten any kind of vibrations, possible vibrations back from the field since Secretary Donovan's statement before this subcommittee?

Mr. WILCOX. No, sir.

Senator NUNN. Too early for that?

Mr. WILCOX. It is too early for that. I think the problem described in maritime terms is like a supertanker that is fully laden with oil. It has been on a set course a long time and a new captain comes aboard and tells the helmsman "Full speed right rudder." It takes a long time to turn that ship around because of its inertia.

Senator NUNN. But you do understand Secretary Donovan's statement as far as you are concerned, as you said, is a complete reversal of Labor Department policy?

Mr. WILCOX. As I read his statement, that is the only impression I could get. He was not only talking about cooperation in the ERISA field, but he said cooperation with regard to any other law the Department had to enforce, and the Longshore Act happens to be one of them.

Senator NUNN. What do you think about the New York Waterfront Commission? Is it working? Is it better to have such a commission?

Mr. WILCOX. I have had mixed comments about the New York Waterfront Commission. The best thing our members say about it, is that its existence is beneficial because, if they are subjected to pressure, they can say "But the waterfront commission will put both you and me out of business." However, I don't think that a waterfront commission is necessary in each and every port.

I think that local people can look after local interests. If we have the cooperation, which I think we will now have, and where there is some central place within the Federal Bureau of Investigation, that which may appear to be a local matter with local individuals in, say, Jacksonville or in Houston, but keeps showing up at different ports, would that you are not dealing with just a local matter.

Senator NUNN. How much difference do you anticipate this provision will make becoming law, removing union officials from positions of trust once they have been convicted of a felony? How much difference do you think that will make in terms of corruption on the waterfront and willingness of people to testify?

Mr. WILCOX. Just the changing the law is not necessarily going to be a cureall. It is an added deterrent which somebody who is going to participate in that venture would think about. I think there are other forces on the waterfront that have to be considered that the Taft-Hartley Act would not reach. I think, to be effective the total cooperation of labor is necessary. I was happy to hear Mr. Kirkland say, at least to the extent the AFL-CIO as an institution can participate, that it will cooperate.

As far as we on the management side can participate, we will. As far as the Federal Bureau of Investigation and local law enforcement agencies can cooperate, then I think the law will be effective. If none of this happens, it is going to be like several other laws that are passed and just sit there.

Senator NUNN. What are the effects on your members in the Miami area when you have people like George Barone, Boyle, so on, all who have been convicted of felonies for over 2 years and are still in union office?

Mr. WILCOX. If you don't have any other choice, you sit down and feel very uncomfortable. You have to deal with them. George Barone is still president of the local down there. Ground rules are such that when management deals with labor, they go through the existing labor hierarchy. There is no choice as to whether or not you deal with them.

Senator NUNN. Who will police the code of ethics that you are adopting if it is approved by the FTC and Justice?

Mr. WILCOX. We presently have a staff of three. The initial provision that we are going to try to enforce, which is the automatic expulsion upon conviction or confession, will have to be policed by the individual members in their areas, with notification to the Association when such an event takes place. As to the other portions of the code, we still haven't worked out an enforcement mechanism because we don't know what the Federal Trade Commission is going to allow us to do.

Senator NUNN. Mr. Wilcox, I want to again express my appreciation for your cooperation during the entire scope of these hearings and I want to congratulate you and the members of your association for taking these very positive steps in the direction of eliminating corruption and fraud within your association and on the waterfront in general.

I know that these are not cure-all nor are the changes in law we propose cure-alls, but they are very positive steps and we thank you for it.

Mr. WILCOX. On my own behalf and that of individual members of the NAS, let me say that the activity of this subcommittee; yourself, Senator Rudman, the committee staff; your own staff; Marty Steinberg and the others has, I think, created at least within our industry a new attitude, hopefully, with the continued cooperation of all the parties involved, we can do something useful.

Senator NUNN. Thank you very much.

Chairman ROTH. Senator Rudman.

Senator RUDMAN. I don't have any questions. I want to echo Senator Nunn's comments, Mr. Wilcox. Your cooperation and your group's cooperation has been superb. We hope that it will continue. Thank you very much.

Mr. WILCOX. Thank you.

Chairman ROTH. I believe Senator Nunn has a closing statement.

Senator NUNN. Mr. Chairman, this won't be long but I do think as we conclude these 4 days of hearings, it should be noted that historic progress has been made. For many years, going back to the McClellan Committee's investigation, this subcommittee has consistently urged the Labor Department to assume a more vigorous role in investigating racketeering in the labor management field. All too often these recommendations were rejected.

[At this point, Senator Roth withdrew from the hearing room.]

Senator NUNN. More recently, particularly since 1975, the year ERISA went into effect, the subcommittee has consistently urged the Labor Department to take the initiative in the decision and investigation of crime in pension funds and employee welfare benefit plans. Again, the Labor Department did not agree and did not carry out the subcommittee's recommendations. Differences between the subcommittee and the Labor Department on the issue of law enforcement were strongly felt. These differences were much more than academic debates. At stake was the Government's ability to combat racketeering in the labor movement.

Without the full commitment of the Labor Department, the Government cannot make use of its most useful tools in criminal investigations.

Federal law in this field is based on the premise that the Labor Department will seek to detect crime in unions and union benefit funds, that it will investigate vigorously evidence of such crimes, and that it will refer in a formal timely fashion results of its investigations to the Criminal Division of the Justice Department. No component of Government can carry out these duties as effectively as the Labor Department.

The Department has the needed statutory access. The Department has the expertise. It would not make sense to give the assignment to any other agency although I must confess many of us have been tempted to try just that out of sheer frustration. Unfortunately, the Labor Department saw things differently.

Senior officials of the Department said they had very limited authority in the criminal field under ERISA. They said they would be on dubious legal ground if they enforced criminal violations of pension fund and welfare benefit plans. They said ERISA was a civil statute with civil remedies. These judgments translated into a policy that said in effect the Labor Department would deemphasize its commitment to inquire into unions and would do almost nothing in detecting and investigating crimes in benefit funds.

The subcommittee objected. We criticized the Department's policy and in strong language. Last August we issued a highly critical report. Several members of the subcommittee joined in legislation to make it uncontestably clear that the Labor Department has the authority and the responsibility to detect, investigate, and properly refer for prosecution evidence of crime in pension plans and benefit funds.

Our bill, S. 1785, would strengthen the hand of Government in moving against labor and management racketeers.

The subcommittee convened these hearings in large part to hear the Labor Department's response to our criticism and legislation. The Department's response has been positive. Senior officers, beginning with Secretary Donovan, have testified that they believe their mandate is to carry out vigorous inquiry of criminal wrongdoing, both in unions and in benefit and pension plans.

They express support for the bill. Their testimony represents a significant change in policy in the Labor Department. Credit must be given where it is due and, for my part, I want to commend Secretary Donovan. He has recognized the important role his Department must assume in criminal investigation and he has taken steps to reorder the Department's priorities. We will be watching very carefully as to how these new mandates and new responsibilities by the Department of Labor are carried out in the field.

The subcommittee has charged that the Labor Department was institutionally incapable of conducting effective criminal inquiry in union and union trust funds.

Secretary Donovan certainly has pledged to change that perception of this subcommittee. His testimony last Wednesday I take as a turning point.

For the time being, anyway, peace has been declared between the subcommittee and the Labor Department and I am all for it. We will certainly be following through.

Equally welcomed was the testimony last Thursday of George Lehr, the new executive director of the Teamsters Central States pension health and welfare fund. Mr. Lehr, a man experienced in banking and State government, made a favorable impression as he acknowledged the existence of serious problems in the way the pension fund has been run in the past and he expressed his determination to set things right.

As I interpret Mr. Lehr's testimony, he intends to run the pension fund as it has never been run before, and to free it from allegations that it is controlled by organized crime.

His stated willingness to enter into a consent decree and stated desire to cooperate in other ways with the Government in reforming the fund reflect an important change in policy, and I might add that also his expressed intention to divorce the fund from the connection with Amalgamated and one Alan Dorfman is something that is long overdue and I hope will be fulfilled. It will be some time before anyone can assess Mr. Lehr's success in meeting his ambitious goals, but he seems to have made a good beginning and certainly we wish him well.

The testimony of Lane Kirkland, president of the AFL–CIO, also represents a significant and strong step in the right direction. Mr. Kirkland's testimony today reveals that the American union movement is being led by men and women of vision and commitment. There is no place in the collective bargaining process for organized crime.

Trade unionism is too important an institution in this country for any segment of it to be compromised by criminal figures. Where such people have attached themselves to unions, government and labor leaders must work together to remove them.

That seems to me to be Mr. Kirkland's message today and I endorse it wholeheartedly. His support for the Labor Management Racketeering Act of 1981 is proof that he stands behind his commitment to rid all unions of organized crime.

And finally, Mr. Chairman, we have Mr. Wilcox, who testified here today on the code of ethics that has been adopted by the National Association of Stevedores and also by the unusual and unique action in setting up a reward fund on the gulf port. I think these are also expressions of willingness on the part of business leaders to carry out their important responsibilities in this area.

So what has happened over these last 4 days has been recognition on the part of labor and Government and management that the old ways of doing things must be improved upon. The Labor Department says it will take the initiative in criminal inquiry. The Central States pension fund says it will cooperate with Government in seeking a consent decree and on other matters, and the AFL–CIO, as well as the National Association of Stevedores, support strong Government tools to combat labor racketeering and management racketeering.

So, Mr. Chairman, this is an extraordinary series of developments. It has been the custom of this subcommittee to handle almost nothing but adversity. It is very difficult for us to adjust in handling agreement, but I think we must welcome that at least as a very pleasant interlude and hopefully one that will continue.

This doesn't mean there won't be a lot of other followthrough that is absolutely essential. There is a lot of hard work, tough decisions ahead and there certainly will be strongly felt differences of opinions on some of these details.

I do believe we have seen some historic progress in the last 4 or 5 days of hearings. I think we ought to express a sense of satisfaction that we are making that progress and that we can work together to continue that progress.

Mr. Chairman, I want to express my appreciation to you and to Senator Roth for convening these hearings and for allowing us to complete a 4- or 5-year process in terms of this subcommittee's inquiries and our own hearings and legislative thrust. We still have, as I say, a long way to go, and I certainly want to express my appreciation to the chairman for his commitment this morning to followthrough on these matters. I think there is an awful lot of followthrough and oversight that has to be undertaken.

I also, Mr. Chairman, want to express my appreciation to you for being so involved in these hearings from the day you arrived in the Senate. You have displayed an unusual interest in the work of this subcommittee. Of course, with your background, you have a tremendous talent and that is apparent in the way you conduct yourself. You are a very strong new force on this subcommittee and the U.S. Senate. And I think that force will be demonstrated in the days ahead even more, but your cooperation in these hearings and your cosponsorship of this legislation has made a tremendous amount of difference, and I thank you for it.

Senator RUDMAN [presiding]. Thank you very much for those words, Senator Nunn.

I want to thank you for your leadership. We want to commend the minority and majority staffs for the superb work they have done, which has now concluded in what I think is perhaps unique agreement by many diverse parties in essentially what we started out to do here, what you started out to do here long before I arrived, with Senator Roth, that is essentially clean up an area that has been festering in this area for many, many years.

Senator NUNN. Mr. Chairman, I need 1 more minute before we finally adjourn.

If I could ask the indulgence of the committee, and this is unknown to the particular individual involved, but I would like to have Mr. LaVern Duffy at least stand up. I am not going to swear him in. LaVern Duffy, stand up here a minute.

LaVern Duffy has been an institution in this subcommittee for a long time. He started work here many, many years ago. He was the right arm of Chief Counsel Robert Kennedy many years ago in the McClellan investigations.

I won't go into all of his history. I would like to put that history in the record at this point.

For a long time we have been trying to get him in a position where we could read to him a committee resolution. Every time he thinks we are going to do it, he leaves. So I have asked the staff to hold him in place while I read a resolution that has been signed by Chairman Roth and every member of the subcommittee.

It is entitled, "Committee on Governmental Affairs, United States Senate, Committee Resolution, LaVern Duffy."

Whereas, LaVern J. Duffy has faithfully served the Committee on Government Affairs since 1953 as Assistant Counsel to the Permanent Subcommittee on Investigations;

And whereas he has carried out his duties in exemplary fashion, bringing credit to the committee and the Congress;

And whereas he has worked effectively to exercise the committee's mandate of examining the operation of the Executive Branch;

And whereas he has improved the committee's oversight function with an unwielding commitment to fairness and a balanced presentation of the facts;

And whereas his services will be sorely missed by the Committee on Governmental Affairs; and therefore be it

***Resolved* That the Committee on Governmental Affairs expresses its deep gratitude and sincere respect for LaVern J. Duffy for his unfailing service and for his dedication to the United States Senate.**

And be it *further resolved* That the Members of the Committee on Governmental Affairs express their best wishes for LaVern J. Duffy's future success and happiness.

In witness thereof, we, the Members of the Governmental Affairs Committee subscribe our name thereto.

Before I give this to LaVern, I would say we wouldn't let him retire long but we have him back on at least a consultant basis and he is working on some very important areas involving transfer of technology.

But this is an award that is long overdue and I appreciate the chairman letting me present it to him.

Senator RUDMAN. Thank you very much, Senator Nunn.

The subcommittee will stand in recess until Tuesday next, the 10th, at 9:30, when the Permanent Subcommittee on Investigations will start several days of hearings concerning International Narcotics Trafficking.

The subcommittee will stand in recess.

[Thereupon, at 11:25 a.m., the subcommittee adjourned to reconvene at 9:30 a.m., Tuesday, November 10, 1981.]

APPENDIX

PREPARED STATEMENT OF FRED ASSELIN, INVESTIGATOR, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

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I. Summary of Staff Statement

Mr. Chairman, I am Fred Asselin. I am an investigator on the staff of the Senate Permanent Subcommittee on Investigations. Since 1969, I have been associated with the Subcommittee, on a fulltime basis as a staff investigator, or on loan from the personal staff of Senator Ribicoff.

I have a lengthy statement which I request be entered into the hearing record as read and that I be given the opportunity to summarize the statement.

The Subcommittee was prepared in 1975 to investigate allegations of organized crime influence in the Teamsters Central States Pension Fund; or to support a Senate resolution creating a select committee to undertake a nationwide inquiry into allegations of labor racketeering, including those regarding the Central States Pension Fund.

The Labor Department, using for the first time the landmark pension reform statute of 1974, the Employee Retirement Income Security Act, gave the Subcommittee every assurance that it would proceed with its own inquiry into the Central States Pension Fund in a professional, procedurally sound manner.

The Subcommittee was informed that Labor Department investigators would work closely with the Criminal Division of the Justice Department. The inquiry was referred to by Labor Department officials as a joint undertaking between the Labor and Justice Departments.

With these assurances in mind, and with the realization that two panels investigating the same subject would face difficulties, the Subcommittee decided not to conduct its own inquiry. Similarly, the resolution setting up the select committee was not adopted.

While deferring to the Labor Department in the Teamsters Central States Pension Fund case, the Subcommittee embarked on its own investigations into fraudulent welfare benefit programs such as health and life insurance, severance pay and other benefit plans.

The Subcommittee documented fraud in several union benefit plans. The Subcommittee began to note a pattern of indifference on the part of Labor Department officials. It was apparent that they did not feel that their mission included the detection and investigation of crime in employee benefit plans.

In addition, the Labor Department was found to be organized in such a way as to not encourage personnel to make crime detection and investigation a priority. For example, the Labor Department's files, containing hundreds of thousands of reports from unions and union benefit plans, were not arranged to detect bogus and highly questionable insurance programs being used in union locals.

In 1978, the Justice Department was disappointed to learn that the Labor Department intended to reduce sharply the number of agents assigned to organized crime strike forces around the country.

Strike Force attorneys testified before the Subcommittee. They cited the increasing encroachment of organized crime figures into union activities and pointed to the need for more, not less, Labor Department investigators. As a result of the Subcommittee's hearings, the Labor Department reconsidered its earlier decision and the reductions in Strike Force assignments were not made.

But the effort to cut back on Strike Force allocation of agents reflected the Labor Department's commitment to a policy that was in effect to ignore evidence of criminal wrongdoing. Labor Department officials told this Subcommittee the department had no role to play in detecting and investigating Title 18 violations such as embezzlement and fraud in union benefit plans. That was, officials said, the responsibility of the Justice Department.

The policy was firmly entrenched in the Labor Department. Forgotten were the assurances the Subcommittee had been given about the close cooperation with the Justice Department in the Central States Pension Fund case. It was revealed by this Subcommittee, for example, that federal prosecutors came to believe that Labor Department investigators were under orders not to even discuss the Central States case with the Justice Department's Criminal Division.

Virtually all the Labor Department's investigative resources which had been assembled for the Central States inquiry were shifted to support the civil suit, which had been filed against the fund's former trustees in February of 1978.

The possibility of criminal prosecutions was out. Third party investigation was not pursued. Fundamental investigative techniques were not adhered to. Persons in the Solicitor's Office with little criminal investigative training took charge of the inquiry. Of the several reputed organized crime figures who had been party to highly questionable Central States loans, very few of them were even interviewed by Labor Department agents and none was named in the civil suit.

Fending off criticism of the department's policy of doing no work in the criminal investigative area in the Central States Pension Fund case, Labor Secretary F. Ray Marshall told this Subcommittee that he doubted the value of sending people to prison if, in so doing, the government did not force those who were responsible for the fund's losses to make restitution. By 1981--now six years after the Labor Department first got into the case--no one had gone to jail because of the department's inquiry, and not a single dollar of mismanaged money had been returned to the pension fund.

In its final report on the subject, the Subcommittee termed the Labor Department's investigation a failure. Moreover, it will be months, possibly years, before a judgment is reached in the civil suit. Secretary Marshall acknowledged to this Subcommittee in 1980 that even if the department wins the civil suit, which is not a certainty--but even if it wins, the fund will not be made whole because the defendants, the former trustees, have neither the resources nor insurance sufficient to restore the fund to the financial status it would have had had the mismanagement not occurred.

Further documenting the absence of the Labor Department in the government's effort to rid unions and union trust funds from organized crime's influence, the Subcommittee held hearings earlier this year on waterfront corruption on the East Coast and Gulf Coast docks.

The hearings revealed the pervasive use of payoffs, bribery, extortion and other illegal methods and the central role in the corrupt environment played by numerous senior members of the International Longshoremen's Association.

Federal prosecutors, FBI spokesmen and several maritime executives testified about an important waterfront investigation--known as UNIRAC, for union racketeering--that led to the convictions of more than 20 ILA leaders, including Anthony Scotto, George Barone, Fred R. Field, Jr., and several more officers of the ILA international.

Thomas (Teddy) Gleason, the ILA president, insisted the corruption that had been revealed in UNIRAC was not typical of the union leadership or reflective of a chronic corruption problem in his union.

The corruption that was commonplace on the waterfront--among ILA leaders and management as well--was not a matter that had occupied the resources of the Labor Department. There was no indication that Labor Department representatives had taken any steps to bring reform to the corruption-ridden waterfront.

In one instance, a shipping firm executive went to a senior Labor Department officer in New York and reported on the existence of a racket in workmen's compensation claims. The racket was so costly that it was threatening to put his business into bankruptcy.

According to the testimony of the shipping executive, the Labor Department officer acknowledged the existence of the racket but said there was nothing he could do to help. It is not known whether the Labor Department did anything to bring to the attention of its own compliance officers or the FBI or any other investigative organization information regarding the workmen's compensation racket.

In summary, over the past six years the Subcommittee has shown corruption and irregular practices to exist in certain Teamsters Union locals, certain ILA locals and certain other locals and their benefit and pension plans.

While demonstrating corrupt practices in these labor organizations, the Subcommittee has, at the same time, recommended that the Labor Department assume a more aggressive role in combatting questionable practices where they exist. The Labor Department has not followed the Subcommittee's recommendations. Moreover, the Labor Department would have reduced its role further had this Subcommittee not intervened when the effort was made to decrease the number of compliance officers assigned to Organized Crime Strike Forces.

It is the view of the Subcommittee staff that labor racketeering is a principal source of revenue and power for organized crime. Unless checked, organized crime figures will continue to steal from welfare and pension funds of union locals, leaving many working families without the benefits and pensions they count on.

It is also the view of the Subcommittee staff that the Labor Department will change direction and take on a more assertive role in investigating labor racketeering only when forceful leadership comes from the office of the Secretary of Labor and only when that leadership is supported by senior and mid-level officials with experience in and enthusiasm for investigative work.

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II. Staff Statement Recounts Subcommittee's Work In Labor-Management Field Since 1975

This staff statement recounts the work the Subcommittee has performed in the labor-management field over the last six years and reports on the recurring disagreements that have existed between the Subcommittee and the Department of Labor as to how the department should proceed in response to evidence of corrupt practices in the labor-management field.

The statement is supported by 26 documents. I request that they be received as exhibits. Unless otherwise noted, they are for reference only and are not to be printed in the record.

Exhibits

1. Justice Department memorandum on motives in abduction and presumed murder of James R. Hoffa. Sealed.
2. "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981.
3. "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," Senate Permanent Subcommittee on Investigations, May 10, 1976.
4. "Supplemental Staff Study of Severance Pay-Life Insurance Plans Adopted by Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977.
5. Hearings, "Severance Pay-Life Insurance Plans Adopted By Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977.
6. Hearings, "Labor Union Insurance," Part I, Part II, Senate Permanent Subcommittee on Investigations, October 10, 11, 12, 17, 18 and 19, 1977; and October 28, 31, November 1, 2 and 4, 1977.
7. "Labor Union Insurance Activities of Joseph Hauser and His Associates," report of the Senate Permanent Subcommittee on Investigations, November 26, 1979.
8. Indictment, _United States of America v. Arthur A. Coia, et al._
9. Hearings, "Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, July 18 and 19, 1977.
10. Hearings, "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, August 25 and 26 and September 29 and 30, 1980.
11. Memorandum by LaVern J. Duffy, Assistant Counsel, Senate Permanent Subcommittee on Investigations, January 17, 1978. Sealed.
12. "Laws Protecting Union Members and Their Pension and Welfare Benefits Should Be Better Enforced," report by General Accounting Office, (HRD-78-154) September 28, 1978.

13. Letter from F. Ray Marshall, Secretary of Labor, to Comptroller General Elmer Staats, May 14, 1979.

14. Letter from Kevin D. Rooney, Assistant Attorney General for Administration, to Comptroller General Staats, June 18, 1979.

15. Hearings, "Labor Management Racketeering," Senate Permanent Subcommittee on Investigations, April 24 and 25, 1978.

16. "Investigative Authority of Secretary of Labor Under LMRDA and ERISA," study by American Law Division of Library of Congress, April 13, 1978.

17. "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," interim report of the Senate Permanent Subcommittee on Investigations, May 20, 1981

18. Letter from Raymond J. Donovan, Secretary of Labor, to Senator Nunn, July 9, 1981.

19. Hearings, "Waterfront Corruption," Senate Permanent Subcommittee on Investigations, February 17-19, 25-27, 1981.

20. Chart showing convictions of ILA leaders.

21. S. 1163, Labor Racketeering Act of 1981.

22. S. 1182, Longshoremen's and Harbor Workers' Act Amendments of 1981.

23. Labor Department memorandum on organized crime, January 1975.

24. Eighteen Washington Post articles on BRILAB, 1980 and 1981.

25. Washington Post article by Joe Pichirallo, "Laborers Union Official Indicted In Kickback," September 25, 1981, p. A-6.

26. Joint statement by Senators Nunn and Rudman on "Anti-Corruption Legislation" affecting labor unions and union benefit and pension funds.

The Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs is, by present and past Senate resolutions, authorized to examine alleged criminal activity in labor-management relations.

The Senate created the Select Committee on Improper Activities in the Labor or Management Field in March of 1957. The Select Committee was an extension of the Permanent Subcommittee on Investigations.

The Select Committee Chairman, Senator John McClellan of Arkansas, was also Chairman of the Investigations Subcommittee. Three of the other Senators on the Select Committee also served on the Investigations Subcommittee. The Select Committee staff included personnel assigned from the Investigations Committee. The Select Committee's rules and procedures were those of the Investigations Subcommittee.

The Select Committee issued interim reports in 1958 and 1959 and a four-part final report in 1960.

The principal accomplishment of the Select Committee's work was passage of the Labor Management Reporting and Disclosure Act, commonly referred to as the Landrum-Griffin Act.

The Landrum-Griffin Act, landmark legislation, was designed to assure democratic practices in unions and to give government tools for the investigation and prosecution of union leaders who abused their positions.

III. Teamsters Central States Pension Fund

The Teamsters Central States Pension Fund was created in February of 1955. As of December 31, 1980, the fund had about $2.6 billion in assets and about 500,000 active participants and retired pensioners. Employee contributions totalled about $586 million a year. Pension payments came to about $323 million a year.

Management of the Central States Pension Fund was a source of controversy almost from its creation. Critics of the fund's trustees said far too much of the fund's assets were invested in risky real estate ventures.

It was also charged that the trustees were influenced by organized crime figures in their investment decisions. Similarly, law enforcement officers said the loans themselves were frequently made to organized crime figures or organized crime fronts.

In 1975, the Department of Labor decided to investigate the pension fund. Two events of that year contributed to the government's decision to investigate the Teamsters Central States Pension Fund.

First, a new reform law went into effect. Second, former Teamsters president Jimmy Hoffa was abducted and presumably murdered in what seemed to be a gangland kidnap-slaying. The Hoffa disappearance came at a time of growing concern in Congress and among the public that the Central States Pension Fund was a billion dollar corpus in the hands of gangsters.

Hoffa's disappearance had a Central States Pension Fund tie-in. After having served a federal prison sentence for Central States Pension Fund fraud, Hoffa had tried to regain the Teamsters presidency he had given up when he was sent to jail. While they never solved the crime, FBI agents and federal prosecutors theorized that Hoffa was done away with in an organized crime attack provoked because gangsters feared Hoffa might tell the public what he knew about the Central States fund and might try to ride a fury of reform back to power. In order to maintain control of the fund, mobsters had to silence Hoffa for good, prosecutors theorized.

The newly enacted pension law, the Employee Retirement Income Security Act of 1974, known by its acronym ERISA, gave federal authorities the responsibility to oversee the operations of most employee benefit plans and to go to court if there were no other means to rid the fund of mismanagement or corruption.

Equally important, the statute gave the Labor Department unprecedented access to and authority over employee benefit trusts such as the Central States Pension Fund. It was anticipated that this access to fund operations would be of historic importance to the Justice Department in mounting prosecutions against persons alleged to be guilty of criminal exploitation of pension funds.

In the Senate, the Investigations Subcommittee was considering the possibility of investigating the pension fund; and Senator Robert P. Griffin of Michigan had introduced legislation, S. Res. 302 of November 18, 1975, to create a bipartisan, select committee to look into the national problem of labor-management racketeering, including allegations of wrongdoing in the Central States Pension Fund.

To discuss what its own course of action should be, to evaluate Senator Griffin's proposal and to receive a briefing on the Labor Departments's investigation, the Investigations Subcommittee met in executive session on December 11, 1975.

The Subcommittee was briefed on the Labor Department investigation by James D. Hutchinson, Administrator of Pension and Welfare Benefit Programs in the department. Hutchinson had general supervisory and policy authority over pension reform programs in the Labor Department.

Hutchinson's responsibility under ERISA included enforcement authority over the fiduciary standards of the new law. Allegations that the trustees of the Central States Pension Fund had violated their fiduciary trust were his responsibility to look into.

Hutchinson's section also had the authority to initiate civil litigation against a fund alleged to have violated ERISA and to refer evidence of criminal wrongdoing to the Justice Department.

Hutchinson stressed the point that the Labor Department would work in close harmony with the Justice Department in the pension fund inquiry.

Hutchinson gave every assurance that the investigation would be run in a professional, procedurally sound manner by lawyers, accountants and agents who were experienced in government inquiry and who were skilled in assembling data for use in both criminal and civil trials.

The Hutchinson presentation was comprehensive and well received by the Subcommittee. While not recommending against a Senate investigation, Hutchinson had pointed out that two inquiries -- one by Labor, the second by the Subcommittee -- would cause some problems such as duplication of effort and difficulties when both bodies tried to use the same witnesses and documents.

As a result of the Hutchinson briefing, the assurances that the Labor Department's investigation would be effective and the realization by Senators that problems would arise if two teams of investigators were looking into the same subject, the Investigations Subcommittee decided not to conduct its own inquiry; and Senator Griffin's resolution to form a select committee was not acted upon.

It appeared that the Labor Department, cooperating at every step with Justice Department prosecutors, was embarking on a successful investigation. The Subcommittee later changed its opinion of that investigation. As the Subcommittee noted in its recent report on the Labor Department's inquiry, "On paper, then, the investigation looked good. But it did not turn out as planned or promised."[1/]

In deciding not to investigate the Teamsters Central States Pension Fund, the Subcommittee announced its intention to monitor the progress of the Labor Department's inquiry. The Subcommittee also said it would conduct its own investigations into other welfare and pension trust funds.

[1/] "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981, p. 162.

IV. Severance Pay-Life Insurance Scheme

With the decision not to investigate the Central States Pension Fund but to monitor the progress of the Labor Department's inquiry, the Investigations Subcommittee, under the direction of its Acting Chairman, Senator Nunn, and Senator Percy, the Ranking Minority Member, began to examine other union trust funds. Hearings were held and a series of reports was issued.

The first of these, entitled, "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," was issued on May 10, 1976 and addressed welfare benefits of Teamsters Local 295 which served the truck drivers and certain other workmen who delivered air cargo to and from and around New York City airports.

Located on the outskirts of the John F. Kennedy International Airport, Local 295 had about 1,400 members and had been one of the "paper locals" created in the mid-1950's which Jimmy Hoffa used to mount his successful campaign for the Teamsters presidency. Local 295 had a history of being influenced by organized crime figures such as Anthony (Tony Ducks) Corallo, John (Johnny Dio) Dioguardi and Harry Davidoff.

The Subcommittee's investigation revealed that Davidoff, a felon and secretary-treasurer of the local, joined with another felon, Louis C. Ostrer, in concocting a severance pay-life insurance benefit that was designed more to benefit Ostrer and his associates and the insurers than the union membership.

The life insurance purchased under the terms of the plan was individual whole life on each member. The whole life concept resulted in excessively high premiums and agent commissions.

Administrative and legal fees were also excessively high. A more conventional group life insurance plan would have been far less expensive and the overall benefits to workers and their families far greater.

The Subcommittee asked the General Accounting Office to evaluate the benefit plan. GAO said the commission costs, which were $800,000, would have been about $10,000 if the coverage had been group rather than individual whole life. The study concluded:

> Thus, the use of individual policies rather than the less expensive group plan cost the fund approximately an additional $790,000 in commissions. [1]

Especially critical of the conduct of the Local's secretary-treasurer, Harry Davidoff, and the mastermind behind the scheme, Louis Ostrer, the Subcommittee study said that instead of being primarily increased compensation for workers, the fund served as a means for improperly obtaining monies from the severance fund.

The excessive agents' commissions and the administrative costs -- and the very concept of whole life policies -- were the avenues through which Ostrer, with Davidoff's concurrence, was able to extract hundreds of thousands of dollars from management at the expense of the workers, the study said, adding:

> A severance pay-insurance plan provides a wide variety of probably legal but certainly questionable methods for mobsters to obtain huge amounts of funds. A mobster who can speak for organized labor in pursuit of an apparent legitimate union demand -- such as a severance fund -- enjoys considerable protection against detection and prosecution. That is one reason why organized crime has been attracted to the union movement for many years. [2]

Another finding of the Subcommittee staff study was that no effort had been made by the Teamsters International to reform Local 295, an organization well known for its ties to organized crime.

The study noted that Harry Davidoff had been associated with Local 295 for about 16 years, that he had longtime organized crime connections and that the mere fact he was able to stay on for so long was sufficient evidence on its face to demonstrate that the corruption that was rampant in the local more than a decade ago had not been cleaned up.

The study went on to say that the Teamsters Union had never lived down the bad reputation it received in the public mind as a result of the activities of Dave Beck, Jimmy Hoffa and their associates. Moreover, the Subcommittee study said, the

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1/ "Staff Study of the Severance Pay-Life Insurance Plan of Teamsters Local 295," Senate Permanent Subcommittee on Investigations, May 10, 1976, p. 35.

2/ Ibid., p. 35, 36.

Teamsters International, if it had the best interests of its members at heart, could have, and should have, seen to it that Local 295 was rid of gangster elements. But the International had done nothing to reform the local, the study said, asserting:

> The International should be determined that each of its local chapters is run for the benefit of its members and certainly not be led by persons who are associated with organized crime. Hundreds of thousands of men and women who are law abiding members of the Teamsters throughout the nation deserve no less.[3]

The staff study said a man with Louis Ostrer's reputation -- he had defrauded a Canadian insurance company of $300,000 and , with John Dioguardi, was found guilty of stock fraud -- never should have been allowed to manage the severance fund program. "Conscientious labor leaders would have noted his ties with organized crime and the fact that he had lost his agent's license in a criminal matter," the study said.

Also called to task were insurance companies that Ostrer contracted with for the Local 295 coverage. The companies should have made it their business to know of Ostrer's reputation and refused to allow him to represent them. By doing business with Ostrer, the insurance companies showed that selling 1,400 individual life insurance policies was more important to them than the ethical considerations of how the policies were being sold and who, in reality, was selling them, the staff study said.

In issuing the study, Acting Chairman Nunn said that, while this staff study concerned itself solely with the severance pay-life insurance benefit of Local 295, independent inquiry by the Subcommittee staff had revealed that similar welfare benefit plans had been designed for other union locals.

Senator Nunn said the potential for abuse in the welfare benefit fund area was a subject requiring further examination by the Congress and the Department of Labor. He said the Subcommittee would continue its inquiry into severance trust funds and related fringe benefit programs in other union locals.[4]

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[3] Ibid., p. 36.

[4] Ibid., p. iii, Senator Nunn's memorandum of transmittal.

V. Additional Severance Pay-Insurance Schemes

On March 21, 1977, the Senate Permanent Subcommittee on Investigations issued a second staff study on the problem of Ostrer-type severance pay-life insurance plans by local unions.

The supplemental study was authorized following release of the May 10, 1976 staff study regarding Teamsters Local 295. The second study was to determine whether severance pay-insurance plans comparable to the Local 295 plan had been adopted by union locals elsewhere in the nation.

The supplemental study identified 11 additional instances in which other local unions adopted severance pay plans comparable to the Local 295 plan.

The second study focused attention on an effort to market the severance pay plan to benefit plans of locals of the Teamsters Union, including Teamsters Local 299 in Detroit.

Also examined was whether the interests of union members were properly represented by Frank Fitzsimmons, president of the Teamsters International, and vice president of Local 299, during consideration of the plan by the local.

Finally, the study questioned the adequacy of the records management system of the Department of Labor as it related to the handling of annual, financial and other reports required to be filed by labor-management severance pay plans and other employee benefit plans.

The Subcommittee identified Ostrer-type severance-insurance programs in Teamsters locals in Detroit[1/]; St. Louis; West Paterson, New Jersey; Paterson, New Jersey and Philadelphia.

Similar plans were noted in four North Miami Beach, Florida locals of the Southeast Florida Laborers' District Council; in three North Lindenhurst, New York, locals of the Industrial Production Employees Union; in a Machinists Union local in New York City; a New York City Airline, Aerospace and Affiliate Employees local; and a Miami local of the International Association of Bridge, Structural and Ornamental Iron Workers Union.[2/]

[1/] Detroit Teamsters Local 299 had two Ostrer-type plans.

[2/] "Supplemental Staff Study of Severance Pay-Life Insurance Plans Adopted By Local Unions," Senate Permanent Subcommittee on Investigations, March 21, 1977, p. 8.

The staff study indicated that from 1970 to 1975, the Ostrer plans, including the one provided in Teamsters Local 295, generated more than $5 million of employer contributions to purchase whole life insurance coverage for more than 14,000 workers.

Of the $5 million, $3 million was paid in commissions and an additional $743,377 was paid in fees. A total of about 76 percent of the $5 million was paid out in the form of commissions and fees.

The Ostrer plans examined by the Subcommittee were found to have the same kind of individual ordinary whole life coverage as did the Ostrer plan at Teamsters Local 295 and led the staff study to conclude:

> ...the adoption of the Ostrer-type severance plans reviewed herein raises a serious question as to whether the trustees of the plans involved acted in the best interests of the beneficiaries of their plans.... [3]

The second staff study said the same Louis C. Ostrer who masterminded his severance pay-life insurance scheme at Local 295 also made a major and largely successful effort to market the plan elsewhere, using one of his marketing agents, Donald Fitzsimmons, Frank Fitzsimmons' son, to sell the plan to Teamsters Local 299 in Detroit and other Teamsters locals. Ostrer profited from his marketing effort.

The study said that evidence developed by the Subcommittee staff showed that Ostrer and Donald Fitzsimmons sought the assistance of Allen Dorfman, Mrs. Rose Dorfman and Sol Schwartz in the marketing of the plan. Dorfman was associated with the Amalgamated Insurance Agency, Inc., of Chicago and was actively involved in Teamsters welfare benefit plan programs, including the Teamsters Central States Health and Welfare Fund. Schwartz was Dorfman's accountant.

The Subcommittee staff was able to identify the Local 295 severance-insurance plan and the additional Ostrer-type plans through its own investigation. The Subcommittee asked the Labor Department to identify other applications of the Ostrer-type plan. The Labor Department could not do so. The department had no way of knowing whether there were any other applications of the plan.

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[3] Ibid., p. vi.

In enacting both the Welfare Pension Plan Disclosure Act of 1958 and ERISA, the Employement Retirement Income Security Act of 1974, Congress intended to protect the interests of workers and their beneficiaries in employee welfare and pension benefit plans.

The laws required disclosure and reporting of the financial facts and other information needed by participants for a full understanding of the covered plans in which they had invested a portion of their earnings.

The Labor Department was to be able to provide this information and, at the same time, be able to give Congress reliable, current data for use in the exercise of its responsibility to oversee the quality of employee benefit plans.

As noted in the March of 1977 Subcommittee staff study, effective enforcement of the many labor laws and regulatory programs administered by the Department of Labor required efficient records management and ready availability of a wide variety of information. The study said:

> The information retrieval system employed by the Department of Labor should also be able to respond promptly and selectively to the needs of Congressional inquiry.[4]

In its investigation, the Subcommittee staff found the Labor Department unable to respond to a request for data on Ostrer-type severance pay-life insurance plans.

The Labor Department's files contained 350,000 annual reports filed by employee benefit plans from 1972 to 1977. But the 350,000 annual reports on file were not stored in such a way as to allow for an efficient and timely retrieval according to types of plans. The staff found that a thorough review of the data reported on any single type of plan required a manual search of thousands of reports.

In sum, the Labor Department could not identify other welfare benefit plans which were based on individual whole life insurance.

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[4] Ibid., p. 49.

Herbert Harris, a General Accounting Office accountant who worked with the Subcommittee staff in preparing the second study, testified about the obstacles Congress faced in obtaining information from the Labor Department about welfare and pension plans.

He said the Labor Department organized its files according to each local union's reports and had no way of retrieving data on general categories. Harris said Subcommittee investigators would have had to review manually all the department's 350,000 annual reports. "We got no help from the Department of Labor as far as isolating the severance-type plans," said Harris.5/

Harris also noted that in reviewing Labor Department files on pension and welfare fund reports he found "crucial documents" to be missing or incomplete on such matters as the size of insurance premiums, the size of commissions and who received the commissions. He said:

> I think this is very important for a rank-and-file member to try to determine how much money is being paid out for these services to know exactly where he stands as far as his insurance plan.6/

In its finding on the records management problem, the Subcommittee staff questioned the ability of the Labor Department to evaluate properly the annual reports that it had on file so that it could protect rank-and-file union members "against not only the abuses inherent in the Ostrer plan, but abuses of other employee benefit plans that may affect many more [working] men and women."7/

5/ Hearings, "Severance Pay-Life Insurance Plans Adopted By Union Locals," Senate Permanent Subcommittee on Investigations, March 21, 1977, p. 18.

6/ Ibid., p. 19.

7/ "Supplemental Staff Study," p. vi.

VI. Hauser-Type Insurance Schemes

Following the investigations of the Ostrer-type severance pay-life insurance plans, the Subcommittee examined the activities of Joseph Hauser, an insurance executive who sold coverage to union benefit trust funds.

Operating in Florida, Indiana, Massachusetts, Arizona and Illinois, Hauser used the tactic of taking over insurance companies. He would loot the companies by pocketing premiums or diverting them to other entities as they were paid by policy holders. He would pay off claims by obtaining new business from labor union benefit trust funds. Eventually his insurance companies were bankrupted. Labor union benefit trust funds and their members and thousands of policy holders lost millions of dollars. In most of his transactions, Hauser had several accomplices.

The Investigations Subcommittee examined Hauser's sale of life, health, accident and other insurance programs to 20 labor union health and welfare plans throughout the country. Eleven days of hearings were held in October and November of 1977.

The insurance contracts which were the subject of the Subcommittee's investigation were solicited and obtained by insurance companies either controlled by or associated with Joseph Hauser.

The Subcommittee showed that of about $39 million in insurance premiums obtained by the Hauser companies, $11 million was diverted to other firms in the form of questionable commissions and commission advances, worthless and questionable investments, conversion to cash, and the payment of personal expenses and legal fees. As a result of this looting, the Hauser companies were forced into receivership or bankruptcy causing losses of millions of dollars to several union trust funds.

Hauser's most siginificant victim was the Teamsters States Health and Welfare Fund, which suffered a loss of about $7 million. Several Laborers' Union health and welfare funds located in New England and Florida suffered losses totaling more than $1 million.

In addition, thousands of individual policy holders suffered financial loss and personal hardship when their insurance companies failed because of Hauser's looting. For example, about 20,000 policy holders of Hauser's Farmers National Life Insurance Company had their insurance cancelled and lost the cash surrender values of their policies. About two-third of Farmers' policy holders were uninsurable or were so old or of such a low income that they had great difficulty obtaining new insurance except at very high prices.

Much of Hauser's success in promoting his insurance companies within the labor movement stemmed from his personal contacts. The Subcommittee learned that Hauser gained access to the union trust funds by cultivating fund trustees and labor union leaders, or persons influential with such officials. Some of those influential with union leaders whom Hauser cultivated were an insurance consultant to fund trustees, attorneys employed by trust funds and relatives of labor officials.

The Subcommittee found that Hauser paid off persons who could help him by giving them favors, arranging finders' fees and commissions for them and promising them consulting contracts with other unions.

Once the insurance contracts had been awarded to the Hauser companies, Hauser and his associates converted large amounts of the premiums to their own use before the claims built up.

The Subcommittee said that as the claims mounted against the premiums which had been diverted to other uses, a portion of the premiums from newly acquired labor union business was used to pay the outstanding claims against the old business. In such a scheme, Hauser was under constant pressure to sign up new unions. When the new business didn't materialize, the only recourse was bankruptcy or receivership.

Using information developed in part by the Subcommittee's investigation, a federal grand jury in Phoenix indicted Joseph Hauser and three of his partners in June of 1978. Charged with conspiracy to conduct a racketeer-influenced and corrupt organization (RICO) and interstate transportation of stolen and unlawfully received funds, Hauser pleaded guilty.

His complex and wide ranging schemes having been brought to the attention of law enforcement by the Subcommittee, Joseph Hauser became an important witness in two major cases.

He assisted the government in a series of prosecutions known under the generic name of BRILAB, for bribery-labor.

Hauser was also a key witness for the government when a federal grand jury in the Southern District of Florida indicted New England crime family boss Raymond L. S. Patriarca and four others -- Arthur A. Coia, Arthur E. Coia, Albert LePore, and Joseph J. Vaccaro, Jr. -- on charges that they conspired to defraud health and welfare funds of the Laborers International Union of North America in Massachusetts, Maine, New Hampshire, Vermont, Rhode Island and Florida.

The Subcommittee report on Hauser noted some similarities in the insurance programs marketed by Louis Ostrer and Joseph Hauser, particularly in the efforts by both men to persuade labor leaders to buy high premium whole life or permanent insurance for their members, rather than the more conventional and less costly group term plans.

However, the Subcommittee report also said Hauser's operation was much larger, more sophisticated and significantly more complex than Ostrer's.

Ostrer's approach was to sell only one product, individual whole life insurance policies, to a specialized type of fund, severance pay trust funds. Hauser and his accomplices dealt with unions' general health and welfare funds. If Hauser could not sell a fund whole life insurance, he would sell it group term life, as well as health, accident and disability insurance.

The Subcommittee report said that, while the Ostrer plan was largely dependent for income on commissions from the insurance companies which placed the insurance, Hauser and his associates acquired and ran their own insurance companies. The Hauser group had access to and use of the full premium payments from the business they generated, including the reserves for future claims.

The Subcommittee report said reputable insurance companies used most of their premiums to pay claims and to set up reserves which were placed in investments. In contrast, the technique used by Hauser was to channel large labor union trust fund insurance premiums into his insurance companies. He would then convert large amounts of these union premium monies to his own use before the claims caught up. The report added:

> As claims mounted against the premiums which had been diverted to other uses, a portion of the premiums from newly acquired labor union business would be used to pay the claims against old business. As a result, new business had to be generated constantly to bring in new premium dollars to pay claims, the reserves for which had been diverted to other uses. In this respect, the Hauser operation resembled a "Ponzi Scheme," or never-ending chain in which the later victims suffer the greatest loss. In this case, the last purchaser of insurance from the Hauser group was the Teamsters [Central States Health and Welfare] Fund which also suffered the largest single loss -- $7 million. 1/

The Subcommittee report pointed out that when the Hauser group had largely exhausted the labor union business available to it in a given state, it entered into a type of reinsurance agreement, known as a "fronting," with a company licensed in other states.

Hauser would then sell insurance to labor union trust funds in additional states, using the policies of the fronting company, but reinsuring all or most of the risks into one of his companies. Most of the premiums would also be passed on to the Hauser company.

From an investigative point of view, looking into Joseph Hauser's operations was a difficult task. The Subcommittee spent one year examining the highly complex and widespread nature of Hauser's activities. The Subcommittee served 100 subpoenas and

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1/ "Labor Union Insurance Activities of Joseph Hauser and His Associates," report of the Senate Permanent Subcommittee on Investigations, November 26, 1979, pp. 58, 59.

reviewed voluminous records and files. Extensive field work was conducted preparing for the 11 days of hearings at which 27 witnesses testified in connection with more than 60 exhibits in a public hearing record of 1,209 pages.[2]

As the Subcommittee became more involved in the examination of welfare benefit trust funds -- first in the investigation of Ostrer-type plans, then in the Hauser approach -- it was becoming apparent that the Department of Labor had a vitally important role to play in protecting union members from being victimized by costly, highly questionable, often illegal insurance programs.

It was also apparent to the Subcommittee that the Labor Department was not fulfilling its duty to prevent the marketing and sale of such insurance programs.

Certain obvious questions were asked, for which Labor Department spokesmen offered unsatisfactory replies. The simple matter of reporting on welfare benefit plans became an issue, for example. How effective was a welfare benefit plan reporting system that could not tell the Labor Department how many Ostrer-type severance-life insurance plans were in operation? Having studied the spread of the Ostrer-type plan for months, the Subcommittee staff was convinced there were more than 12 applications of it, as noted in the two Subcommittee investigations, but the Labor Department had no way of finding out. Impatient with the Labor Department's reporting system, a Subcommittee staff member testified:

> I know that there are other plans in existence. I don't know how many other plans and I cannot characterize whether or not it is likely that there are many other plans....[The Labor Department] is the source of the problem. Each of these plans is required to file annual reports with the Department of Labor. That would lead one to the conclusion that it would be a matter of just reviewing the plans that they would have available and identifying those plans and then coming to the conclusion of how many plans are in existence.
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> However, when we...initiated that process, the Department of Labor was unable to identify the number of plans that are in existence and that pointed out one of the findings of the study, that

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[2] Ibid., p. 58.

> it doesn't make a great deal of sense to require the severance plans to report if we are not able to identify...how many reported, what type of severance plan it is and a number of other relevant facts.[3]

The Hauser investigation raised similar doubts about the effectiveness of the Labor Department's ability and willingness to use the reporting system to pick out information suggesting questionable and illegal insurance practices. How effective was a reporting system that could not flag questionable and illegal health and welfare benefit plans?

Of equal importance was the Labor Department's ability and willingness to protect union members from persons of known questionable reputation. When he sold and promoted some of his most flagrant insurance programs to welfare benefit funds, Joseph Hauser was under indictment, having been charged in California in March of 1975 with bribing union officials to do business with his firm, National Prepaid Health Plans.

When, in 1974, National Prepaid Health Plans went bankrupt, it left more than $2 million in debts and unpaid union and other medical claims.

Despite the troubles in California with federal and state authorities, Hauser was able to acquire and maintain control of more insurance companies and market his scheme to more union health and welfare funds in Florida, Indiana, Massachusetts, Arizona and, finally, in Illinois where, at Teamsters Central States Health and Welfare fund offices, he perpetrated his biggest sale, a $23 million group life insurance contract. The entire Hauser operation collapsed shortly thereafter and the Teamsters Fund lost $7 million.

The Subcommittee continued looking into the effectiveness of the Labor Department's investigations of criminal statutes pertaining to labor organizations. Paralleling this investigation, was the Subcommittee's continuing interest in monitoring the progress of the Labor Department's investigation of the Teamsters Central States Pension Fund.

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[3] Subcommittee hearing, "Severance Pay-Life Insurance Plans Adopted By Union Locals," p. 17.

A review of developments that began to emerge in 1977 indicated that the Labor Department had strong views on what its duties were in the labor-management field. The department's views differed sharply from those of the Subcommittee, the General Accounting Office and the Department of Justice.

The Subcommittee, GAO and the Justice Department believed the Labor Department was obliged to detect, investigate and properly refer to Justice information indicating criminal wrongdoing in union benefit and pension plans.

The Labor Department took a nearly opposite position, asserting, in general, that it wished to cooperate fully with federal prosecutors, but that it had very limited statutory criminal investigative responsibility and authority, particularly in the area of welfare and pension fund fraud.

Most recently, the Subcommittee disputed the Labor Department's view in its report on the Teamsters Central States Pension Fund.[4] But the point was made earlier and often. In the Hauser report, for example, the Subcommittee said:

> The Subcommittee finds that the Department of Labor takes an unduly narrow view of its responsibility to detect and investigate violations of Title 18 criminal provisions relating to ERISA plans.[5]

The Subcommittee report went on to say:

> In order to have an effective criminal enforcement program, it is necessary for the Department of Labor to have a comprehensive program to detect potential violations and to make appropriate preliminary inquiries prior to referring cases to the Department of Justice for further criminal investigation. Without this initial inquiry process by the Department of Labor, it is inevitable that many criminal as well as civil violations will go undetected.[6]

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[4] "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund." pp. 159-189.

[5] Hauser report, p. 35.

[6] *Ibid.*, pp. 35, 36.

VII. Labor Department Officials Testify On Inquiry

In July of 1977, the Investigations Subcommittee held two days of public hearings to measure the progress of the Labor Department's investigation of the Central States Pension Fund.

Senator Percy, at the time the Ranking Minority Member of the Subcommittee, said in his opening statement that the government's inquiry into the pension fund was already 18 months old and it was appropriate for the Congress to take a close look at what had been achieved.

Describing the pension fund's history as reflecting a "pattern of mismanagement, cronyism and faulty judgement on the part of former trustees," Senator Percy said the fund had invested millions of dollars in Las Vegas gambling casinos, a Florida dog track, racetracks in Ohio and Pennsylvania, a jai-alai center in Connecticut, a luxurious California resort frequented by Teamsters officials and a failing Chicago hotel whose construction was financed by a bank which had a pension fund trustee serving on its board of directors. In another instance, he said, millions of dollars were loaned to a firm which allegedly gave one pension fund trustee a gift of substantial stock. Senator Percy added:

> Associates of organized crime figures were allegedly loaned enormous sums. Reportedly, an associate of Meyer Lansky was loaned $15 million [and] $150 million went to 35-year-old Allen Glick, mostly for Las Vegas gambling casinos which were subsequently investigated for skimming from slot machines. At the time of the loans, Glick had no substantial business experience.1/

Fund investments resulted in a 4.9 percent rate of return between 1960 and 1974, compared with 7.5 percent on Treasury notes, Senator Percy said, adding that 29 pension fund loans were listed as in default as of December of 1975 and many more were uncollectible.

Senator Percy said 71 percent of fund assets were in high-risk real estate ventures. By comparison, most pension funds limited their real estate investments to five to ten percent of

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1/ Hearings, "Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, July 18 and 19, 1977, pp. 4, 5.

their portfolios. About half of the fund's loans were to a small number of persons and more than half the loans were for ventures in California and Nevada, Senator Percy said. He went on to say:

> Certainly, from the standpoint of the fiduciary's responsibility, this would seem to be totally out of line for normally accepted standards that should be established by the fiduciary.[2]

There was concern on the part of some federal officials that because of unwise investments the pension fund might have lost $500 million to $700 million, nearly one half its assets, Senator Percy said.

He pointed out that bad investments and declining assets had led fund officials to warn that future employer contributions might have to be increased by about 20 percent to $37 a month for each new employee. Teamsters members, currently able to retire with full pension after 20 years of service or age 57, might further suffer from the fund's mismanagement by not being able to retire will full pension until 30 years of service or age 65.

Senator Percy said the fund's problems stemmed, in part, from "consummate arrogance" and "excessive secrecy," He explained:

> It is an arrogance borne of too little attention by the former trustees to their obligations on behalf of the rank and file. It is a secrecy that appears deliberately intended to conceal their reckless investment decisions. [3]

To further his goal of ending the secrecy that he felt had for too long concealed pension fund operations, Senator Percy pressed Labor Department witnesses on the need to reveal details of what the fund was doing and how the investigation was moving.

But, while Labor Department Secretary F. Ray Marshall and his aides were willing to discuss in general terms what they knew about the pension fund and how their inquiry was going, they refused to give facts and figures about what their investigators had learned.

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[2] *Ibid.*, p. 5.

[3] *Ibid.*, pp. 5, 6.

Referring to a "joint" Labor Department-Justice Department investigation, Secretary Marshall traced the history of the probe to date -- describing its start in 1975, the cooperative agreements worked out by his department with the Justice Department and the Internal Revenue Service, the revocation of the fund's tax exempt status, his decision to make "protection of fund assets" the primary objective of the investigation, the resignations of the fund trustees and the turning over to outside investment managers control of much of the funds assets.

Marshall said his investigators now would begin third party investigation. Third party investigation is that point in an inquiry when agents move beyond the original documentation and sources in the case and begin to interview and obtain evidence from persons who have knowledge of and participated in events central to the subject under examination. In the Central States case, for example, third party investigation would have meant interviewing borrowers, taking depositions from them and from persons who knew what the borrowers had done with the loans. Marshall's words on the point of third party investigation were as follows:

> At this time our investigative activity is shifting from a review of fund records and documents to a search for evidence in the possession of others such as individuals associated with the fund. Much of what we discovered in the asset management phase of our investigation will be relevant to this second phase. [4/]

Marshall stressed the point that his agency was cooperating fully with the Justice Department by periodically turning over to Justice evidence that might warrant prosecution under federal criminal laws.

Marshall did not say, however, that his agents were being allowed to investigate evidence of criminal wrongdoing before referring it to the Justice Department. Nor did he give details about the manner in which the referrals were being made; or how many of them there had been. These issues became important to the Subcommittee in the months and years ahead.

4/ Ibid., p. 15.

Some four year later, in a final report on the Labor Department's investigation, the Subcommittee criticized the Labor Department 1) for not conducting the third party investigation that had been promised; 2) for not conducting investigation of evidence of criminal wrongdoing; 3) for not referring evidence of crimes to the Justice Department in a formal, procedurally sound manner; and 4) for making very few referrals.[5]

But in the July 1977 hearings it was not yet completely apparent to the Subcommittee the long range consequences of the Labor Department's policy on crime in pension and welfare benefit funds.

That policy was articulated at the hearings by Monica Gallagher, a Labor Department lawyer who, in 1977, was Counsel for Enforcement.

Senator Jackson, citing the pension fund's $180 million in Nevada gaming houses, asked if the Labor Department's investigators were looking into the possibility that there had been any illegal acts connected to such a huge commitment of resources to the gambling industry.

Gallagher's reply was that the Labor Department's inquiry was being conducted under authority of ERISA and that ERISA was a civil statute, not criminal. Criminal investigation was for the Justice Department. Senator Jackson tried to get Gallagher to acknowledge that the Labor Department had a responsibility to do the preliminary investigation of crime in pension funds, but she refused.

Senator Jackson asked if there were criminal penalties in ERISA and their discussion went like this:

> Gallagher: There are criminal provisions in ERISA relating mainly to reporting and disclosure violations, Senator. The criminal provisions which are most likely to be in the forefront of your thinking are those related to embezzlement which are provisions of Title 18 and enforced by the Justice Department.

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[5] Hearings, "Oversight of Labor Department's Investigation," August 25, 1980, p. 71. GAO said that in the entire five-year life of the Labor Department inquiry only 11 formal referrals were made to the Justice Department.

> Senator Jackson: What about a clear violation of a fiduciary relationship in which the conduct is such to certainly bear on criminal conduct? Are these provisions in ERISA dealing with that kind of situation?
>
> Gallagher: Senator, the ERISA provisions for fiduciary violations are provisions allowing participants to seek restitution and return of profits, but those are civil provisions, not criminal.
>
> Senator Jackson: If there is a criminal conduct on the part of trustees which clearly violates the fiduciary responsibility, are you saying that that would not be a violation of federal criminal law?
>
> Gallagher: No, sir, not at all. It would be a violation of federal criminal law, but it would be that part of the federal law which is codified in Title 18, and which is enforced by the Justice Department.
>
> Senator Jackson: But there is no separate penalties provided for in ERISA of a criminal nature?
>
> Gallagher: For fiduciary violations.
>
> Senator Jackson: What about clear course of conduct that may involve conversion to one's own use or a means by which enrichment can occur to those who are supposed to be the trustees and in fiduciary capacity?
>
> Gallagher: Senator, that conduct is already prohibited by Title 18.
>
> Senator Jackson: I understand. I am aware of Title 18. Are you saying there are no special provisions in ERISA?
>
> Gallagher: No, sir.[6]

That exchange between Senator Jackson and Monica Gallagher was typical of the debate that was to occur frequently over the next four years. The Subcommittee would want to know what the Labor Department was doing in the investigation of alleged crimes in the Central States Pension Fund. The Labor Department would respond by saying criminal investigation was not what it was supposed to do under ERISA, that its mandate was civil and that crimes were the province of the Justice Department.

The debate was not disagreement over an abstraction. The point of contention -- the responsibility of the Labor Department to detect, investigate and properly refer criminal cases to the Justice

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[6] Ibid., pp. 18, 19.

Department -- had important implications. At stake was the question of whether or not persons who had allegedly looted the Teamsters Central States Pension Fund of hundreds of millions of dollars would ever be brought to justice. The answer to the question was no. Criminal charges have been brought against none of the principal borrowers or other major third parties as a result of the Labor Department's investigation.

Secretary Marshall summed up his agency's policy on criminal investigation when he told the Subcommittee in 1977 that he was aware of the problem of illegal conduct in pension fund activities and that he had directed that his investigators give complete cooperation to the Justice Department but it would accomplish little to send pension fund looters to prison and not collect the money that had been lost. He explained:

> It doesn't do you a lot of good in many cases to put somebody in jail if you don't recover the funds, because you need to do both.[7]

Marshall's view would be called into question four years later when the Subcommittee found that the Labor Department's investigation had resulted in no one going to prison and no funds being collected.

It was the Secretary himself who admitted in 1980 that even if the government should win judgement against former trustees charged in a civil suit with fiduciary breach that the defendants will not be able to repay the lost monies. The former trustees, Marshall said, had neither the personal resources nor the insurance to make the fund whole.[8] The department's initial policy of not investigating culpable third parties resulted in this anomaly in which the only defendants charged are those who cannot afford to reimburse the fund.

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[7] Ibid., p. 26.

[8] Hearings, "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, August 25 and 26 and September 29 and 30, 1980, p. 290.

VIII. Staff Memorandum On Differences With Labor Department

The Subcommittee's mounting concern over the Labor Department's passive attitude toward labor racketeering, particularly in the employee benefit fund area, was the reason for Senator Nunn's direction that the staff prepare a memorandum drawing as precisely as possible the lines of fundamental disagreement between the Subcommittee and the department.

The memorandum, written by Assistant Counsel LaVern J. Duffy, was submitted on January 17, 1978.

The memorandum provides a summation of the philosophical and legal differences between those persons who do not believe the Labor Department has major responsibility to investigate labor racketeering and those persons who believe the department does have such major responsibilities.

Duffy, whose experience with the Sucommittee includes service on the Select Committe under Senator McClellan, said that in 1959 when the Landrum-Griffin Act (Labor Management Reporting and Disclosure Act) was passed, the Labor Department created the Labor Management Services Administration (LMSA) and gave the new entity enforcement responsibilities for the new law.

The act contained numerous criminal penalties for embezzlement, fake reporting, false or non-existent record keeping, violence against union members, and criminal sanctions under the Taft-Hartley Act, Section 320, which prohibited bribing of union officials by employers.

In 1962, the responsibility for enforcing the Welfare and Pension Disclosure Act was given to LMSA.

And in 1974, the pension reform act, the Employee Retirement Income Security Act (ERISA), was given to LMSA for enforcement.

Duffy said the following criminal sanctions of Title 18, U.S.C., were applicable to violations of the 1962 Welfare and Pension Plans Disclosure Act and ERISA: 18 U.S.C. 664, embezzlement; 18 U.S.C. 1027, fake reporting and destruction of records; and 18 U.S.C. 1954, bribery and kickbacks.

Duffy said there was a widespread feeling among Labor Department officials that department policy, as reflected by LMSA, was to stress civil remedies and to neglect criminal enforcement. He said:

> The individuals subject to LMSA's scrutiny have developed the impression that the department is not taking its enforcement responsibility seriously, and the statutes are violated to an astonishing degree. The Field Audit Program, to verify the accuracy of financial reports filed by union and pension plans, is almost non-existent. This was a prime source for criminal prosecution. Because investigations and prosecutions have decreased within the past few years, the Labor Department has stopped publishing the results of its criminal investigations.

Duffy said prosecutions of labor racketeering resulting from information from the Labor Department had decreased. The department, he said, had not supported adequately the Organized Crime Program of the Justice Department.

The Labor Department had agreed to supply the Organized Crime Strike Forces with compliance officers -- Labor's term for investigators -- who were expert in the detection and investigation of criminal violations of labor laws.

Recognizing the important contribution the Labor Department could make in this regard, Congress appropriated funds to enable the department to support the Strike Forces. Duffy said:

> In this connection, responsible Labor officials state that despite the fact that Congress has appropriated funds to the Labor Department in fiscal year 1977 to support 64 investigators, only about 35 actually are performing this work nationwide. In many cities there are no LMSA investigators actually performing Strike Force work, although on paper it would appear that people are assigned.

Justice Department spokesmen advised the Subcommittee that on November 29, 1977 they met with Francis X. Burkhardt, Assistant Secretary of Labor, in an effort to persuade him to make sufficient numbers of compliance officers available to the Strike Forces.

The Justice Department felt a fair number of compliance officers for the Strike Forces would be 115. Labor Department officials replied that they could supply only 15.

The Labor Department commissioned the Decision Studies Group, a division of Science Management Corporation of Washington, D.C., to conduct a study entitled, "Evaluation of the Delivery of LMSA Field Services."

The Subcommittee obtained a copy of the draft report that was given to the Labor Department on October 7, 1977. The draft report criticized the Labor Department for its lack of support of the organized crime programs.

The report said the Labor Department had down played the importance of the organized crime effort to such an extent that it caused diminished morale among compliance officers who were assigned to Strike Forces. The report said:

> The view expressed by many field personnel was that LMSA should either support OCP [Organized Crime Program] properly or get out of the program entirely.

The Decision Studies Group went on to say:

> The basic issue of whether or not LMSA is to pariticipate in the Organized Crime Program must be decided. While OCP is a mandated program, support to OCP has fallen to such a low level in some offices that even ardent supporters question the viability of the program under the present circumstanes....OCP priorities are the lowest within LMSA in many area offices. Rotation of COs [compliance officers] between OCP and regular LMSA casework has been detrimental to the Organized Crime Program. Overall direction for OCP has been inadequate to properly manage the program.

The report added:

> There appears to be a lack of direction of the anti-Organized Crime Program by either the Department of Labor or the Department of Justice. The program tends to become self-perpetuating and is typified by a lack of commitment from either area of Regional Administrators or by the ARA [Area Regional Administrator] for LMSA.

IX. GAO Report On ERISA Enforcement

On November 29, 1977, the Subcommittee asked GAO to study the Labor Department's investigation into criminal violations of the law in the operations of labor organizations and pension and welfare benefit plans.

The GAO report, issued on September 28, 1978, disclosed shortcomings in the Labor Department's criminal and civil enforcement programs. In the report, "Laws Protecting Union Members and Their Pension and Welfare Benefits Should Be Better Enforced," GAO found that most of the Labor Department's efforts and priorities in 1977 dealt with subjects other than criminal violations; that most of the effort under ERISA was devoted to activities other than enforcement of either the criminal or civil provisions of ERISA; and that the department used its national office computerized reporting process and desk audit system to achieve voluntary compliance with the laws.

GAO found the following weaknesses in the investigations and audits of labor organizations and employee benefit plans:

1. Lack of coordination in investigations of criminal and civil violations under both the Labor Management Reporting and Disclosure Act and the Employee Retirement Income Security Act.
2. Lack of formal procedures for notifying the Justice Department of cases under investigation.
3. Little investigative effort by regional offices to follow up on reasons for deficient reports submitted by unions and employee benefit plans.
4. Lack of sufficient field audit work at labor organizations and benefit plans.
5. Insufficient staff to enforce both LMRDA and ERISA and little formal training provided to regional office investigative and audit staffs.

The second finding -- that of a lack of formal procedure for notifying the Justice Department of cases under investigation -- would be proven correct frequently. The Labor Department was later found to have erected such a stubborn barrier to communication with the Criminal Division of the Justice Department that ultimately federal prosecutors came to believe that the Labor Department's investigators were under orders not to speak to them about their work.[1]

In addition, GAO found that, in fiscal year 1977, the department unit with the duty to investigate unions -- the Labor Management Services Administration -- spent only one percent of its man-days on field audits of labor organizations and only three percent of its man-days on field audits of pension and welfare funds.

GAO put forward the following recommendations for corrective action:

1. Secretary of Labor F. Ray Marshall should ask Congress to give his department additional resources so that he could enforce the criminal provisions of the LMRDA and ERISA.

2. The department should strengthen area office audit acitvity by increasing the number of on-site field audits of unions and employee benefit plans and assure that consistent, high quality audits are made.

3. The department should improve the timeliness of area offices' investigations of cases with potential for criminal violations.

4. The department should establish procedures to require direct, continuous coordination between criminal and civil investigative activities in unions and pension and welfare plans by area offices.

5. The department should set up procedures to notify the Justice Department of its investigative efforts.

6. The department should review the training of its field staff to insure that auditors and investigators -- known as compliance officers -- had the skills needed to carry out their assigned duties.

Secretary Marshall's response to GAO's report was to adhere to his position that the Labor Department had a very limited role to play in criminal investigations.

1/ Hearings, "Oversight of Labor Department's Investigation," August 25, 1980, p. 14.

In a letter to Elmer Staats, the Comptroller General, on May 14, 1979, Marshall said he was committed to "aggressive programs" to enforce LMRDA and ERSIA provisions for which his department was responsible.

He said his department was implementing a comprehensive training program for employees in ERISA enforcement and would soon begin a training program in audit procedures for LMRDA compliance officers.

Otherwise, Marshall would not acknowledge any deficiencies in the Labor Department's enforcement program or address GAO's specific findings of shortcomings and GAO's recommendations for corrective action.

Marshall rejected the idea of stepping up the field audit program as too costly. He added:

> ...I have serious doubt about the efficiency of simply throwing additional staff at the problem.

It was a "fundamental misconception" by GAO to suggest that ERSIA gave his department extensive criminal duties, Marshall said, explaining:

> ...from this department's perspective, ERISA is primarily and essentially a civil statute, although we do have certain criminal responsibilities. It was, I feel, unfortunate for the [GAO] report to proceed on such a misconception.

Marshall was critical of GAO for language that "might lead the casual reader" to believe embezzlement from a union or union fund was a crime under ERISA. As will be noted later in this presentation, it has been the Subcommittee's position that whether embezzlement from a welfare fund is covered under ERISA is not the issue. The issue is that the Labor Department is obliged to be on the alert for evidence of embezzlement, to document it where it exists and to make an investigation of the evidence and then to properly and formally refer the information to the Justice Department in a timely and procedurally sound fashion. That point was made several times by the Subcommittee to Secretary Marshall but his opinion continued to be that embezzlement was not specifically covered by ERISA and that, therefore, the Labor Department was not mandated to investigate. Embezzlement was only one of the many crimes not specifically covered under ERISA. No crimes, except those having to do with reporting and disclosure, were covered by ERISA, Marshall explained, as he told Staats:

> As you are aware, ERISA is a statute whose principal remedies are civil and whose primary purpose is to protect plans and their participants.

It is useful to point out that every criminal offense against a pension fund is a civil violation. There can be no more blatant a fiduciary breach, for example, than embezzlement.

From Marshall's words, it was apparent that he did not consider it a form of protecting plans and their participants by investigating union fund embezzlers and other criminals with an eye toward putting violators in prison.

Marshall had doubts about using more investigative resources to find labor racketeers. He preferred to learn more about the "root causes" of crime in the labor movement and to use the "appropriate civil and/or criminal remedies" to deny unscrupulous persons from assuming positions of trust in unions or trust funds.

Marshall did not enlarge upon how he intended to find the "root causes" of labor racketeering or how the data would improve the ability of the Labor Department to combat it.

Kevin D. Rooney, Assistant Attorney General for Administration, offered a different response to the GAO report in a letter of June 18, 1979 to Comptroller General Staats.

Rooney said the Justice Department agreed with the GAO in its conclusion that the Labor Department did not feel its priorities included detecting and investigating crimes in labor unions and union employee benefit funds.

Under ERISA particularly, Rooney said, Labor Department compliance officers were not encouraged to undertake criminal investigations.

Rooney spoke out against "substantial and potentially harmful delays" caused by the Labor Department's Solicitor's Office inserting itself as a reviewing agent between any information passed from a compliance officer to the Justice Department. Rooney said the Solicitor's Office at Labor was interested primarily in initiating civil cases and had failed to recognize the potential for criminal prosecution in some cases.

Discussing the Labor Department's system of filing reports submitted by labor organizations, Rooney said the department did not use desk audits of these reports in such a way as to try to detect instances of irregularities that might lead to criminal cases.

Compliance officers working on criminal investigation frequently were reassigned in the middle of their inquiries to work on civil cases and contested union elections, Rooney said, adding that investigative reports that did find their way to the Criminal Division of the Justice Department were often of inferior quality, a reflection of the fact that many Labor Department investigators needed more training in how to prepare a criminal inquiry.

The Criminal Division had recommended creation of a special category of criminal investigative compliance officer or an intensified training program in criminal invesitgation but Labor Department officials were cool to the idea, Rooney said.

X. Testimony Of Strike Force Attorneys

The Subcommittee held two days of hearings in April of 1978 to continue its evaluation of the government's ability to combat racketeering in the labor-management field.

Witnesses included Organized Crime Strike Force attorneys who were called before the Subcommittee to evaluate the effectiveness of the Labor Department's efforts to stop the intrusion of organized crime into the labor movement.

Newark and Buffalo

A summation of the problem of labor racketeering and the need to have the Labor Department help combat it was put forward before the Subcommittee by Robert C. Stewart, the attorney in charge of the Newark and Buffalo Offices of the Criminal Division in the Department of Justice.

After describing several instances in which organized crime figures had taken over local labor unions, Stewart concluded his testimony by pointing out that labor racketeering was as serious a problem today as it was in the 1950's when the McClellan Committee and other investigating panels brought the issue to the attention of the American public. The situation was worse than ever, Stewart said, adding:

> It is a serious mistake to believe that the circumstances portrayed in Marlon Brando's movie, On The Waterfront, of the 1950's are somewhat passe.[1] The only real difference today is that captive labor organizations have a host of CPA's and very capable labor attorneys who are both able and willing to fight the government to a standstill. The books always balance and there is always an authorizing resolution in due form of law for every questionable expenditure. Yet the assets of a captive labor organization can be depleted without the knowledge of the CPA's by sophisticated financial manipulations.
>
> What we have today is the exact same problem as in the 1950's involving many of the exact same suspects but the problem has become infinitely more difficult because of the financial sophistication which has been developed to circumvent the labor reform legislation.

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[1] Stewart's reference to the corruption portrayed in the movie, On The Waterfront, was intended to apply in a figurative sense to certain pockets of lawlessness in the labor movement in general. However, as the Investigations Subcommittee was to document three years later, waterfront corruption on the East Coast and Gulf Coast docks was rampant and virtually uncontrolled. The Subcommittee's hearings on waterfront corruption are discussed later in this staff statement.

> And the prize today is some $40 billion in benefit fund assets which are not adequately protected because the government does not have the legislative tools and the investigative and prosecutorial resources to enforce the regulatory legislation which is on the statute books.[2]

Like many other federal prosecutors, Stewart was disappointed in the lack of interest the Department of Labor had shown in labor racketeering. Impatient with the Labor Department for foot dragging, Stewart recommended that Labor be given one more opportunity to investigate labor racketeering and if it failed to live up to its commitment, the responsibility it has in the field should be transferred to the FBI and the Criminal Division of the Justice Department.

Stewart testified:

> The Department of Labor has recently offered to augment its personnel commitment to the labor racketeering program of the Department of Justice and to eliminate some of the bureaucratic problems which have been criticized by prosecutors. The Department of Labor should be given an opportunity to fulfill its pledges in this regard. But, if the practical and policy difficulties which have obviously prevented the Department of Labor from achieving any significant results over the past 20 years are not corrected, the enforcement responsibility should be transferred to the Federal Bureau of Investigation and the Criminal Division in the Department of Justice.[3]

Stewart said that unless steps are taken to protect welfare benefit trust funds and to remove gangsters who control them, the nation will face "a benefit default of catastrophic proportions." Stewart was of the opinion that this fate awaits the country unless there is "a drastic improvement in the government's enforcement capabilities."[4]

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[2] Hearings before the Senate Permanent Subcommmittee on Investigations, "Labor Management Racketeering," April 24 and 25, 1978, pp. 69,70.

[3] Ibid., pp. 70, 71.

[4] Ibid., pp. 74, 75.

Chicago

Peter F. Vaira, attorney in charge of the Organized Crime Strike Force in Chicago, offered the Subcommittee a discouraging assessment of the extent of organized crime's inroads into the labor movement in the Chicago area.

Vaira testified that in the Chicago area nearly every major local union of three international unions was controlled by the Chicago crime syndicate.

Vaira said the officers of these unions answered directly to, or were actual lieutenants in, the crime syndicate. He said other unaffiliated unions were also controlled by the syndicate. He added:

> The degree of corruption in the labor movement in Chicago is among the worst in the country.[5/]

Vaira said the history of the infiltration of the unions could be traced to the Al Capone era. Through the years, he said, the power of hoodlums had increased. He said the most disturbing aspects of organized crime's control over the unions was that the corrupt labor leaders were accepted by many persons as legitimate members of the business community. Corrupt labor leaders were able to exercise significant political power, Vaira said.

Vaira was critical of the Department of Labor. He said the department's compliance officers had been unable to develop, or contribute to, many labor racketeering cases. He said there had been some compliance officers who did try to do effective work in labor racketeering cases but the Labor Department had restricted them and offered them no encouragement to continue in these efforts.

Vaira said the Labor Department had no current information on organized crime's intrusion into the labor movement. He cited one instance in which compliance officers were using 10-year-old data on the impact of organized crime figures on unions. The Labor Department had no method for keeping up to date on union corruption in the Chicago area, Vaira said.

[5/] Ibid., p. 82.

Vaira said that what investigation the Labor Department did into union racketeering was poorly executed and frequently marred by serious errors of fact. Vaira said compliance officers were not familiar with labor violations, were guilty of conducting interviews in an unprofessional manner and were forced by Labor Department requirements to conduct narrow and incomplete investigations.

The Labor Department did not keep the U. S. Attorney's Office in Chicago informed of investigative progress, or lack of it, Vaira said, pointing out that the Labor Department closed cases with criminal prosecutive potential before sufficient information had been gathered.

Similarly, he said, at the close of one of its cases, the Labor Department was supposed to bring it to the attention of the U. S. Attorney. Instead, the Labor Department wrote to the local union and informed it of the questionable acts.

Vaira cited another inquiry in which an employer complained to the Labor Department that he was being forced to employ unneeded personnel under the threat of violence. The Labor Department closed the investigation of the complaint by informing the union of the employer's allegation, and identifying the complaining businessman by name. Vaira said that several weeks later the employer's business was bombed. Then the business was attacked by persons who tried to pour acid over the furnishings.[6]

Vaira said the FBI had tried to investigate labor racketeering in the Chicago area and had had some success. But the FBI did not have the broad statutory access to union records that the Labor Department had. The Bureau had to rely on grand jury subpoenas to acquire union records.

Vaira went on to say that a team of Labor Department investigators, well staff and experienced, could accomplish much more than the FBI could in the field of labor racketeering. He said:

> It is essential that the Labor Department become active in the uncovering of union corruption. This DOL [Department of Labor] effort would complement the FBI activities and produce good results for both agencies.[7]

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[6] Ibid., pp. 83, 84.

[7] Ibid., p. 85.

Cleveland

Douglas P. Roller, attorney in charge of the Organized Crime Strike Force in Cleveland, said his city was predominately a blue collar community with a high degree of unionization of workers. He testified that corruption and organized crime involvement were commonplace.

Roller said:

> A great number of the union officials in this area are either organized crime personalities in their own right, or are associates of organized crime figures. These corrupt union officials constitute a virtual web of interlocking associations and diverse major labor organizations including the Teamsters, the Laborers, Longshoremen and the building trades. This interconnection extends also to the civic and political strata of Cleveland. [8]

Roller said the connection between the labor movement in the Cleveland area and the organized crime elements of the region had a long history dating back to the late 19th Century. Roller added:

> This is not to say that by any means that every local union is infiltrated or controlled by organized crime, but rather to point out the close association between certain elements in the labor movement and organized crime. The impact upon the community of organized crime by control of substantial blocks of union members is self-evident. [9]

Roller criticized the Labor Department's work in organized crime-labor racketeering cases. Compliance officer did generally satisfactory work in straight audit and embezzlement investigations, Roller said, but they received little or no support from Labor Department national offices in Washington, D.C. in more complicated cases such as when there was a need for subpoenas or additional manpower or when appropriate investigative procedure called for third party interviews.

"Almost non-existent" was the way Roller described the intelligence upon which the Labor Department decided which unions to audit. Labor Department manpower allocations to the Cleveland area for criminal investigations were already below what was needed and any further reductions would be "absolutely devastating," Roller said. [10]

8/ Ibid., p. 89.

9/ Ibid.

10/ Ibid., pp. 91, 92.

Manhattan

Michael Q. Carey, attorney in charge of the Organized Crime Strike Force in Manhattan, said labor racketeering in the Southern District of New York occurred in a certain number of the locals in virtually every international union represented in his area.

George Nash, the former Labor Department representative on the Strike Force, told him that serious labor corruption existed in local unions of three particular international unions, Carey said, adding that spokesmen from other federal agencies participating in the Strike Force had found corruption in the unions mentioned by Nash and in others as well.

Carey said the resources provided to investigate the entire field of union corruption in his jurisdiction were "totally inadequate to the task."[11]

Of all the agencies working in the Manhattan Strike Force, the Labor Department had the lowest number of personnel, Carey said.

Carey opposed the idea that the FBI could take over the responsibilities of the Labor Department in labor racketeering investigations for three reasons.

> First, [Carey said] no agency, other than the Labor Department, has the accumulated expertise in criminal labor investigations necessary to conduct the type of sophisticated investigations which are waiting to be pursued.
>
> Second, the FBI does not have the authority to begin an audit of a labor union, but must rely upon an allegation that criminal activity has occurred before they may initiate an investigation.
>
> And, third, the FBI does not have sufficient manpower to conduct labor corruption investigations without reducing its commitment to other areas of organized crime prosecutions.[12]

Carey stressed the need for using investigators in labor corruption cases who were familiar with the operations of unions, who understood how pension and other welfare benefit plans work and could evaluate union records. Only those Labor Department compliance officers with this kind of experience and training were helpful on labor racketeering cases, Carey said.

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[11] Ibid., p. 111.

[12] Ibid., p. 112.

Citing the need for more experienced compliance officers and pointing to a decline in the value of data provided the Strike Force by confidential informants in the labor corruption field, Carey said there had not been enough independently developed information to justify FBI audits and that made it all the more important that the Labor Department have the resources and the commitment to conduct the audits.

An audit that showed no sign of corruption was still a valuable exercise, Carey said, because it let the union know the monitoring process was close at hand and that it actually served as a deterrent to those who might try to commit a fraud in the absence of government scrutiny.

Carey estimated that it would require 15 investigators working fulltime on labor corruption cases in New York City several years to even begin to make a dent in the organized crime problem.

He noted two recent major convictions -- of International Longshoremen's Association General Organizer Fred R. Field, Jr., in a $100,000 bribery case and of New Jersey Teamsters officer Anthony (Tony Pro) Provenzano in a $300,000 kickback scheme -- as examples of successful prosecutions that called for substantial commitments of government resources.

Carey said the compliance officers assigned to his Strike Force became sufficiently experienced to do competent work after a minimum of a year on the job.

Carey said that in one on-going investigation of a "very important and well known" international union, every one of the international's New York City locals had been found to be infiltrated by organized crime.

Brooklyn

Thomas Puccio, attorney in charge of the Organized Crime Strike Force in Brooklyn, told the Subcommittee that only experienced Labor Department compliance officers had the know-how to mount the kind of comprehensive investigation needed to prepare for union racketeering prosecutions.

Puccio said that the removal of, or any decrease in, the Labor Department's commitment to the Strike Force in the Eastern District of New York would have "disastrous affects on our overall fight against labor racketeering."

Twelve Labor Department compliance officers were assigned to the Strike Force in the Eastern District, Puccio said, noting that these same 12 agents also worked for the Organized Crime Unit of the U. S. Attorney's Office in the Southern District of New York.

Puccio said one proposed solution to the shortage of compliance officers was to use agents working out of the Labor Department's regional offices in New York. Puccio strongly opposed the idea. He said the Labor Department did not coordinate the investigative work of its regional office in New York with the Department of Justice. Justice was not informed on the progress of investigations. Instead, the cases are referred to the Solicitor's Office in the Labor Department's national offices in Washington where the decision was made as to whether or not to refer the matter to Justice for possible prosecution.

Valuable time was lost in this process, Puccio said, noting that, because prosecutors were not called in early in the inquiry, the quality of the cases was usually diminished. The cases referred to him in this manner were few in number, were not of much consequence and frequently had to do with minor embezzlement and technical reporting violations involving lower echelon employees of labor unions. Puccio said these cases generally were not of interest to Assistant U. S. Attorneys.

Taking a historical view, Puccio said labor racketeering had reached a level similar to what it was in the late 1950's and early 1960's when the government, prodded in part by information developed by the McClellan Committee, placed great emphasis on organized crime and labor racketeering investigations.

Puccio said that no Administration since that of President John Kennedy had approached labor racketeering prosecutions with needed enthusiasm and commitment of resources.

Puccio went on to say that the reduction in investigative resources and the emergence of corrupt labor officials who controlled large financial holdings had combined to make labor racketeering a problem of "even more immense proportions." He added:

> Our recent experience in the Eastern District of New York corroborates these facts. Statements of witnesses and testimony obtained in numerous investigations conducted by our office, as well as reliable intelligence information provided to us by a vareity of sources, have establsihed that labor racketeering is pervasive.
>
> In addition, more allegations of illegal labor-related activities are received by our office than on any other organized crime matter. Even more siginificantly, those allegations are almost always substantiated by investigation.
>
> In fact, most labor racketeering investigations, which begin with an initial allegation of extortion, embezzlement or the making of illegal payments, branch off into investigations of other significant violations as well.
>
> Thus, it is clear that the labor racketeering problem is most severe and that the need for an effective law enforcement response is essential. 13/

Puccio recommended assigning more Labor Department compliance officers to the Strike Force in the Eastern District of New York. He said the FBI was trying to develop investigative expertise in labor cases but was still operating at a disadvantage in the field.

Philadelphia

Joel Friedman, attorney in charge of the Organized Crime Strike Force in Philadelphia, described labor racketeering in the Eastern District of Pennsylvania as an "awesome problem." He said organized crime had infiltrated many major unions and that some of the captured unions were "deeply entwined with our local political power structure."14/

13/ Ibid., pp. 76, 77.

14/ Ibid., p. 105.

Especially troubling to Friedman was the control organized crime figures had over pension fund assets. He warned that if criminals continued to spend fund assets, the funds could be bankrupted. In order to check the intrusion of organized crime into benefit funds and other aspects of the labor movement, comprehensive, time consuming investigations, staffed by competent, experienced personnel, should be conducted. In that regard, the Labor Department had failed to make the needed contribution to the government's effort, Friedman said.

Focusing its resources more and more on civil cases, the Labor Department's commitment to the Philadelphia Strike Force was declining and the result had been that the Strike Force attack on labor racketeering had been "haphazard and fragmented," Friedman said.

The Labor Department was not structured in such a way as to encourage racketeering investigations, Friedman said. He pointed out that the Labor Department considered investigations of alleged irregularities in union elections to be of a higher priority than were inquiries into labor racketeering. There was a flaw in the department's reasoning, Friedman said, explaining:

> It should be noted that these election complaints usually arise in unions where there is sufficient deomocracy to permit some dissident voices to be heard. However, this type of election protest is rarely heard in those unions which are Strike Force targets due to the fear and terror usually associated with trying to take over power from the hands of organized crime.
>
> Thus, the victims of organized crime -- the memberships of these unions -- get less attention from the Labor Department than the members of other unions where dissident factions have sufficient freedom to openly oppose incumbents whose policies or practices displease them. This is a complete reversal of the priorities intended for combatting the power and influence of organized crime in the labor movement.[15]

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[15] Ibid., pp. 107, 108.

Boston

Gerald E. McDowell, attorney in charge of the Organized Crime Strike Force in Boston, called the Subcommittee's attention to an extreme barrier to communication which the Labor Department had erected. He said that in Boston the Labor Department had laid down rules requiring compliance officers assigned to the Strike Force to speak only to their Labor Department supervisor and preventing them from conversing with the supervising Strike Force attorney.

McDowell said compliance officers had been reprimanded for disclosing important intelligence information directly to the Strike Force. Such rules were in direct contradiction to the basic concept of the Strike Force, which was to emphasize a close working relationship between investigators and attorneys from the start of the inquiry forward.

McDowell said that forcing the compliance officers to report through their Labor Department supervisors prevented a complete and direct line of communication between investigators and Strike Force attorneys.

McDowell said the Labor Department had an unfortunate habit of closing out investigations referred by the Strike Force with short one-page memoranda indicating that no evidence of a violation was found but failing to record whether any interviews were conducted or whether any other investigative efforts were made.

The Boston Strike Force had devoloped a great deal of information about labor racketeering, McDowell said, but, he added, for this information to be translated into criminal prosecutions considerable investigative work had to be done. Much of this investigative effort could be performed only if the Labor Department would make the necessary commitment of compliance officers -- and only if the Labor Department personnel would be allowed to communicate directly with Strike Force attorneys, McDowell said.[16]

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[16] Ibid., pp. 159-162.

Miami

Marty Steinberg, an attorney in the Miami Strike Force of the South Florida Strike Force, said labor racketeering was "rampant in at least four or five major South Florida labor unions."

He said confidential informants who were highly regarded in organized crime circles had informed the Strike Force that southeast Florida had been declared an "open territory" by organized crime, indicating that all La Cosa Nostra or Mafia crime families would tolerate each other competing for "business" there.

The result, Steinberg said, was that organized crime figures who had engaged in all manner of criminal conduct in New York, Chicago and elsewhere had converged on South Florida and resumed their illegal activities.

One favorite target for them was labor unions where federal prosecutors had already proven the misappropriation of millions of dollars of union and union trust fund money. Steinberg said prosecutors had shown other crimes in union-related cases, including violent extortion schemes, kickbacks to labor leaders, murder, theft of materials and supplies, phony insurance and service contracts. Steinberg added:

> The impact of this pervasive use of labor racketeering on the economy is staggering. Construction, tourism, transporation, labor insurance, and other related fields absord the tremendous inflation of corrupt union practices.
>
> Every home, business or other item that has to depend on union labor or trust funds run by labor racketeers bears the cost of embezzlement, kickbacks, extortions and the like. All these "costs" of doing business are passed on to the consumer. In labor racketeering trials, employers have frankly admitted that these "costs of doing business" are passed on to the consumer and deducted from their taxes. The economic impact is severe.[17]

Steinberg, who became Chief Counsel of this Subcommittee and is now Chief Counsel to the Minority, said the depletion of union trust funds by corrupt labor leaders left the members with reduced benefits after years of contributions.

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[17] *Ibid*., p. 97.

He said many union members had come to federal agents to complain that after 20 to 30 years of paying into the pension funds there was no money left in the trusts for their retirement. In addition, he said, since the government insured some pension funds, federal tax dollars were used to reimburse the looted trusts.

Many union members tolerated the incursion of mobsters into official positions in unions under the mistaken impression that gangsters bargain harder, Steinberg said. Union members who believed that should consider the losses they suffer over the long run. Along with the higher wages he may have won for workers, the racketeer has also entered into sweetheart deals with management, extorted employers, and stolen from the union and union trust fund, Steinberg said.

Asserting that Labor Department compliance officers had done good work in South Florida, Steinberg said they brought to labor racketeering cases an expertise essential to successful prosecutions. However, he said, the Labor Department was reducing its commitment of compliance officers in Miami from four agents to one at a time when 10 to 20 investigators could be kept busy on a fulltime basis. Cases had been opened but remained uninvestigated because there were no compliance officers to work them, Steinberg said.

Even though the FBI was assuming more responsibility in labor racketeering cases, the Bureau could not fill the need for having fulltime Labor Department compliance officers on the case, Steinberg said, adding:

> These Labor Department agents deal with union and trust funds on a daily basis. Their specialized knowledge and training in these matters make their aid essential. Their access to and understanding of reports filed by unions and trust funds is also important. Most important of all is their constant exposure and ability to open lines of communication and develop avenues of information that lead to significant investigations that are not available in other quarters.[18]

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[18] *Ibid.*, p. 103

Steinberg enlarged upon a point made by Joel Friedman, Strike Force attorney in Philadelphia, who had complained about the Labor Department's decision to focus more and more attention on civil investigations and civil suits and, in so doing, removing resources from criminal investigations.

Steinberg also noted the Labor Department's shift away from criminal inquiry and to civil cases and had this criticism to level against it.

Steinberg said the substitution of civil investigations for criminal enforcement was not feasible. The preferable sequence, he said, would be to have civil teams "back up or mop up behind the criminal investigations."

> In this way [he said] not only do you have the salutory effect of convictions of labor racketeers to discourage similar acts, but you would have civil teams recovering funds and removing officers and trustees after conviction.[19]

Civil action would never be as effective as criminal prosecution in labor cases, Steinberg said, pointing out that criminal inquiry was necessary to seek out those sophisticated labor racketeers who used complex schemes to extract money from or through unions.

In addition, he said, criminal investigations had the advantage of the use of grand juries to compel testimony and records, the use of informants, court-ordered electronic surveillance and other investigative techniques not available to civil investigators.

Steinberg said civil investigations took longer than criminal, that criminal cases had priority in the judicial system and move forward rapidly while civil cases remained in court for years at a time. He said:

> ...the objective of a civil investigation may not have the same impact a criminal case will. A civil suit to remove a trustee or recover money long ago dissipated has no appreciable effect on the labor racketeer. The penalty of a removal and threat of civil liability which is traditionally compromised or forgotten completely once the trustee is removed means little to a labor racketeer who has misappropriated millions of dollars. In fact, the minimal nature of the threat to the labor racketeer encourages him and others to commit more crimes.

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[19] *Ibid.*, p. 101.

> The tools available through a criminal investigation and prosecution are much more formidable and have much greater impact. First and foremost, the perpetrator goes to jail, which is an object lession in and of itself....Not only does criminal prosecution and conviction punish the offender, but it serves to put others on notice not to commit the same acts.
>
> Another advantage...is that criminal investigations are self-initiating inquiries to unearth irregularities. They do not depend on prior discovery of wrongdoing as in a civil matter.
>
> Also, the economic impact on a defendant can be immediate and devastating. If the RICO statute (18 U.S.C. 1963), is used, the government can move to forfeit money, positions and property to the government upon conviction. If the defendant is tried for the tax consequences of his illegal acts in the same case, which is preferable, he faces monumental tax problems upon conviction.
>
> The results of the use of these criminal tools have a much more immeidate consequence to the defendant than any civil action could possibly have. In addition, the defendant loses freedom and assets. The law under RICO has established (in the Rubin case) that the defendant will also forfeit the positions he held with the unions or trust funds.[20/]

Steinberg said there was a serious shortcoming in the Labor Department's policy of focusing exclusively on the civil enforcement features of the pension reform statute, the Employee Retirement Income Security Act (ERISA), to the virtual exclusion of enforcement of the Taft-Hartley Act prohibition against payoffs to union officials and the enforcement of federal laws against misappropriation of union funds and extortion and kickbacks.

Prohibitions against misappropriation of union funds and the Taft-Hartley Act anti-payoffs provision were important statutes and should be enforced by the Labor Department, Steinberg said. Moreover, while the FBI also had jurisdiction in kickback and extortion cases, traditionally these crimes arose out of labor racketeering investigations and had been handled by Labor Department compliance officers,Steinberg said. He went on to say:

> If the theory is that the civil ERISA teams will proceed civilly and then refer everything criminal they find to the Justice Department, this process will not work.

[20/] Ibid., p. 102.

First of all, without the special aid of a prosecutor in the investigative stages many complicated sophisticated schemes may be . overlooked.

Second, I am unaware of any cases which have been referred from the Labor Department for criminal prosecution.

In my opinion, none of the cases which have been investigated and prosecuted criminally in Southern Florida would have seen the light of day if this were the procedure that was employed.

I believe you could ask anyone who has dealt in the criminal enforcement of the labor laws about the necessity for criminal as opposed to purely civil action and they would concur.[21]

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[21] Ibid., p. 103.

XI. Civiletti And Marshall Had Differing Views On Strike Force Issue

In the same hearing, Benjamin Civiletti, the Acting Deputy Attorney General, also spoke about the problems his agency faced in getting the Department of Labor to carry out its responsibilities to detect, investigate and properly dispose of cases of alleged labor racketeering.

Civiletti said the Justice Department was trying to persuade the Labor Department to increase the participation of "compliance officers" -- that is, Labor Department investigators -- in the Organized Crime Strike Forces.

Citing a drop in the assignment of compliance officers from 199 in 1972 to 44 in 1977, Civiletti said the Labor Department investigators had responsibility to monitor labor organizations and in that capacity were uniquely equipped to detect criminal violations. The problem was in getting the Labor Department to do what it could do best.

No other component of government could detect criminal violations of labor unions as well as the Labor Department if only the department would make a commitment to do it. Civiletti said the FBI, for example, had neither the statutory authority nor the expertise to monitor union activity.

When he learned that the Labor Department intended to further diminish to 15 compliance officers its participation in Strike Forces, it "sent a chill up my spine," Civiletti said. After considerable protests from the Justice Department and this Subcommittee, the Labor Department, citing a misunderstanding, announced that 125 investigators would be assigned to the field of organized crime and labor racketeering. But Civiletti was not convinced. He told the Subcommittee that the personnel assigned to this field existed only on paper as far as he knew and he would consider the assignments a reality when the compliance officers were actually working on labor corruption cases.1/

1/ Hearings before the Senate Permanent Subcommittee on Investigations, "Labor Management Racketeering," April 24 and 25, 1978, pp. 13-19.

The debate between the Labor Department and Justice was not an isolated event. Nor was it strictly an argument over the allocation of compliance officers to labor racketeering investigations. At issue was a fundamental and sharp difference in opinion and philosophy as to what was important and what were priority concerns.

The Labor Department did not place a high priority on eradicating crime from the labor movement. Conversely, the Justice Department made that objective a very high priority, believing that labor racketeering was an important aspect in the overall existence of organized crime in the United States. The Investigations Subcommittee had noted the difference in opinion and had generally endorsed the view that the Labor Department could be and should be doing more in combatting the intrusion of organized crime into the union movement.

In his April 1978 testimony before the Subcommitee, for example, Civiletti said the Justice Department had made labor racketeering "a primary target" in its efforts to control organized crime.[2]

Giving the Subcommittee another point of view at the hearings was F. Ray Marshall, the Secretary of Labor from 1977 to 1981, who testified following Civiletti and the Strike Force attorneys.

Marshall said the Labor Department fully supported the Justice Department's drive against labor racketeering. But, that being said, Marshall made clear his skepticism about the entire effort -- and the need for it. He suggested that the Justice Department had exaggerated the problem of organized crime's encroachment into the labor movement and that, in fact, the problem was a small one.

Pension funds and other benefit plans were, in fact, more secure now than they had ever been, Marshall said, testifying:

> Now I would have great difficulty believing that the funds are as vulnerable, with the passage of the Labor Managment Reporting and Disclosure Act [Landrum-Griffin], with the reporting of ERISA, as they were at the time of the McClellan hearings. I find that almost imcredible.

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[2] Ibid., p. 13.

> I know that we have done some things to protect the major funds and that we, as you know, have the ability to remove trustees from a fund. We have the ability to enjoin transactions that we think will jeopardize the funds, and we have done that.
>
> We also have the ability to require restitution to those funds and to require better information about them.
>
> ...I have great difficulty believing that after the passage of LMRDA, and all we are doing to try to insure the democratic procedures within organized labor, that those procedures are no more secure than they were in the 1950's. I find that incredible.[3]

Marshall did not accept the assertion made by several Strike Force attorneys that organized crime had captured certain union locals and had infiltrated certain international union organizations. For example, in his prepared remarks, Marshall was careful to say that some unions were "tainted" by organized crime but avoided words like "captured" or "controlled" or any other word suggesting that gangsters were actually in charge.

Moreover, Marshall felt that the way to remove organized crime from a union was to study the problem first and then try to understand why organized crime figures had succeeded in one union and failed in most others. In any event, he said, organized crime's intrusion into the labor movement affected less than one percent of the local unions in the country. Such limited success by criminal elements indicated to him that this was "not a major problem."

In depicting the organized crime problem as a small one, Marshall had used statistics first given the Subcommittee by Acting Deputy Attorney General Benjamin Civiletti. In his testimony, Civiletti had described the labor movement as being generally free of organized crime but that where the problem did exist it was of considerable dimensions. Civiletti said there were about 75,000 local unions in the nation and that about 300 of them were "severely influenced by racketeers." This would indicate that less than one-half of one percent of the locals were controlled by gangsters. But, Civiletti added, "300 is an awful lot of racketeering influence in local unions."[4]

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[3] Ibid., p. 205.

[4] Ibid., p. 9.

Enlarging on that point, Civiletti had said most of the 300 locals were concentrated in about five or six international labor organizations and the crimes that showed up in them included no-show or ghost employees who were frequently organized crime members paid for doing no work; kickbacks to trustees of pension funds in return for loans to shaky investment projects which were in turn looted; payoffs to union officials in return for which an employer's labor costs were kept to a minimum; and embezzlements from union treasuries. Civiletti added:

> All of these activities cost someone, if not everyone, money. They cost either the consumer who must pay higher prices because the cost of labor is inflated by payments which the employee never received, or they cost the employee who does not receive the wages he should because the employer has a sweetheart contract or because his pension fund has inadequate resources to pay the pension he has been counting on for his retirement. Underlying all of these monetary costs, which are substantial enough by themselves, are the fundamental costs of loss of workers' freedom, physical safety, and even lives when mobsters exercise or obtain control through violent means.[5]

Marshall was persuaded neither by Civiletti's description of the problem nor his point that the 300 corrupt and controlled locals were largely in five or six internationals, making their impact on the labor movement itself of greater force than their numbers might suggest. Instead Marshall stressed the need for more study of the problem and a realization that merely prosecuting gangsters and removing them for union positions was no solution because they would only be replaced by other gangsters. That approach had been tried 20 years ago and had failed, Marshall said. His testimony on these points was as follows:

> ...it seems to me that one of the most important things this committee can do and we can all do working together is to put the problem in the proper perspective; that is, to find out how serious the problem is, how widespread it is and some of the dimensions.
>
> I notice conflicting testimony on that fact. And I think the beginning of our understanding of the problem ought to be first to try to say how pervasive it is; and, second, we ought, as part of that process, to ask ourselves where is it located and why is it located where it is.

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[5] Ibid., pp. 9, 10.

It seems to be it would be very difficult for us to do much about any problem unless we first analyze its root causes, and to see if it is concentrated in particular places, as it appears to be, what are the reasons for that and what can we do to change those particular causes, basic root causes that are at work here.

If, for example, we find that most of the crime in the labor movement is concentrated, as it appears to be, in less than one percent of the local unions in the labor movement, and concentrated in relatively few international unions, we ought to follow that by asking ourselves the question, what are the circumstances in those places that lead to the infiltration of criminal elements?

I think the fact that it is not randomly distributed throughout the labor movement suggests that the problem is not a major problem but that it has basic causes. We would probably find that a basic cause is the availability of funds which have not been adequately controlled and where accountability has not been adequately enforced. Other possibilities include opportunities for bribery and kickbacks, and those opportunities are usually related to the ability to make decisions about which employers get labor and which workers get jobs.

Now these are not circumstances that are pervasive in the labor movement. But it seems to me we need to undertake that kind of systematic investigation in order to be able to isolate the basic areas within the labor movement where we have a serious problem with organized crime and try to strike at those.

I emphasize that because it seems to me that if we do not do that, then 20 years from now we will be back making the same kinds of statements we are making now....

Let me suggest, however, that the mistake might have been 20 years ago to assume that the problem was randomly distributed throughout the labor movement and not to look at areas of basic causation. Because if that is all you do -- in other words, if your basic objective is simply to arrest criminals and incarcerate them, then you won't ever solve the problem in my judgment. I think you have got to do more than that. That is an important part of the program.

But if you only do that, and if there are basic causes that tend to produce criminal elements, then new criminals will take the place of the old. Sometimes they are related to the old. You are not really doing things to root out the basic causal forces at work in the problem.[6]

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[6] Ibid., pp. 190, 191.

XII. Library Of Congress Study

With the Labor Department's unyielding view that it had little or no responsibility to detect and investigate crimes under the Employee Retirement Income Security Act (ERISA), the Investigations Subcommittee sought the judgment of the American Law Division of the Library of Congress.

In an April 13, 1978 research paper submitted to the Subcommittee by American Law Division Legislative Attorney Vincent Treacy, the Library of Congress concluded that both LMRDA and ERISA conferred on the Labor Department the responsibility to detect and investigate evidence of criminal wrongdoing in the activities of unions and union trust funds.

The Library study said the Congress intended that the reporting and disclosure provisions of both LMRDA and ERISA were to be major tools to be used by the Secretary of Labor to detect the possible existence of violations.

The Library study found that the Labor Department had the responsibility to turn over to the Justice Department any evidence developed by Labor investigators which warrants consideration for criminal prosecution under federal law.

It was the finding of the Library study that, while the Justice Department was responsible for the prosecution of those who illegally used the assets of unions and pension and welfare funds, it was the duty of the Labor Department to take the initial action to see that such alleged violations as fraud, embezzlement, misapplication, conflict of interest and other criminal acts involving those assets were exposed and brought to the attention of the Attorney General for prosecution.

In commenting on the findings of the Library of Congress study, Senator Nunn expressed the Subcommittee's long standing opinion on this subject when he said in October 14, 1978 remarks in the Senate:

> The key to effective enforcement of the criminal provisions applicable to LMRDA and ERISA is the initial detection of a potential criminal violation. The government cannot investigate or prosecute a criminal violation unless it is first detected.1/

1/ Congressional Record, October 14, 1978, p. S.19549

XIII. Interim Report Issued On Roy Lee Williams

On August 25 and 26 and September 29 and 30, 1980, the Investigations Subcommittee held hearings on the efficiency and effectiveness of the Labor Department's five-year inquiry into the Teamsters Central States Pension Fund.

One of the witnesses at the hearings was Roy Lee Williams, who was then president of the over-the-road truck drivers Teamsters Local 41 in Kansas City, Missouri and vice president of the Teamsters International. Williams, who had been a member of the board of trustees of the pension fund for 22 years, was frequently mentioned as a likely successor to Frank Fitzsimmons as president of the union.

In his appearance before the Subcommittee, Williams was questioned about court-authorized electronic surveillance tapes and other information developed by law enforcement indicating that he was an organized crime "mole," a pawn of gangsters who had been given senior positions in the Teamsters Union and in the Central States Pension Fund to look out for the interests of Kansas City crime boss Nicholas Civella and other mob figures.

To each question the Subcommittee asked Williams about his reported ties to Civella and other gangsters, Williams invoked his Fifth Amendment privilege, saying that if he responded his answer would incriminate him.

Frank Fitzsimmons died on May 6, 1981. Williams was appointed to succeed him as president on an interim basis pending an election at the Teamsters five-year convention that was to take place in Las Vegas in June of 1981.

The Investigations Subcommittee issued an interim report on May 20, 1981 -- about two weeks before the Teamsters convention -- devoted to Williams' appearance before the Subcommittee, his reported ties to organized crime figures and his invocation of the Fifth Amendment privilege when asked about his alleged link to mobsters and about his conduct as a union fiduciary, both as a member of the Central States pension fund board of trustees and as a senior officer of the union.

It was the Subcommittee's view that it was obliged to speak out against Williams before Teamsters delegates voted on his candidacy for union president.

After recounting the information it had received on Williams' reportedly being controlled by Nick Civella and other organized crime figures, the Subcommittee's interim report recommended that the Department of Labor initiate legal action that would require Williams to either waive his Fifth Amendment privilege and give a full and sworn accounting of his conduct as a union fiduciary or step down as an officer of the union.

The Subcommittee based its recommendation on a course of action the Labor Department had followed in forcing the resignation of William Presser from the board of trustees of the Central States pension fund.

When, early in the department's investigation of the fund, William Presser invoked the Fifth Amendment privilege during a deposition with government lawyers, the Labor Department demanded his resignation.

The department did not question his right to invoke the Constitutional privilege against self-incrimination but it did question his right to be a union fiduciary -- that is, a member of the pension fund board of trustees -- and not give a full and sworn accounting for his actions taken in the fiduciary role.

Rather than test the issue in court, William Presser resigned from the board.

In its recommendation in the interim report, the Investigations Subcommittee said the Labor Department should invoke the same principle with Roy Lee Williams.

The Subcommittee pointed out that Williams, in addition to his fiduciary role as a pension fund trustee for 22 years, was, by federal statute, a fiduciary of the union by virtue of his senior position.

It was, the Subcommittee said, the responsibility of the Labor Department of bring Williams before a legal proceeding and give him the opportunity once again to respond to questions about his fiduciary role. If he again invoked his Fifth Amendment privilege, the department should begin action to try to remove him from office on the grounds that he would be in breach of his fiduciary obligations by refusing to account for his conduct as a fiduciary.

In the interim report recommendation, the Subcommittee said:

> The Labor Department was able to persuade one of Roy Williams' colleagues, William Presser, to resign from the board of trustees of the Central States pension fund. William Presser would not answer questions the Labor Department asked him about his fiducairy conduct. The Labor Department argued that trustees are obliged to account for their conduct as fiduciaries. If they refuse, they can be accused of being unsuitable to continue to serve as fiduciaries. When confronted with a department demand that he resign, William Presser chose not to test the issue in court and stepped down from the board.
>
> The Labor Department's position was that a fiduciary, a person entrusted with the money of union members, must be held accountable as to how he handled that money. The Subcommittee beleives the Labor Department should apply the same legal reasoning to Roy Lee Williams and his fiduciary conduct.[1/]

In the recommendations, the Subcommittee noted the Constitutional right of any citizen to refuse to incriminate himself. Care was taken to stress that it was not Williams' right to invoke the privilege that the Subcommittee was questioning. The issue the Subcommittee raised was Williams' right to remain a fiduciary while refusing to give a full and sworn accounting of his conduct as a fiduciary. The Subcommittee said:

> The federal government, by statute, has granted labor unions and their officials many benefits no other entity enjoys. As a result, those officials have important responsibilities and duties as fiduciaries. If these officials do not live up to these responsibilities, there is no legal reason that the labor union official should enjoy these federally mandated benefits by virture of their retaining their fiduciary role.

[1/] Interim Report, "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," Senate Permanent Subcommittee on Investigations, May 20, 1981, p. 13.

> The Subcommittee is not suggesting that an individual be penalized merely for asserting his Fifth Amendment privilege. It is suggested, however, that a fiduciary has certain obligations, among them the obligation to fully disclose matters affecting his fiduciary responsibilities. If a fiduciary breaches this duty, he may be removed. It is not our purpose to comment on the reason a fiduciary refuses to disclose, such as the invocation of the Fifth Amendment privilege. The reason for refusing to account for his conduct as a fiduciary does not eliminate his responsibility to abide by his fiduciary duties. Any breach of his fiduciary duties may be grounds for removal regardless of the reason for the breach. Any such refusal to respond, coupled with factual allegations of misconduct, should be aired in a full and fair due process hearing to determine if such a fiduciary should be removed. Federal labor law grants the Department of Labor the right to apply to a federal court for removal of fiduciaries.[2/]

The Subcommittee referred the interim report to the Department of Labor and asked the department to let the Subcommittee know what it intended to do in response to the recommendation regarding Roy Lee Williams in 60 days.

In subsequent meetings between the Subcommitttee staff and officials of the Labor Department, the department rejected the Subcommittee's recommendation. Department officials said federal law did not give them uncontestable authority to initiate legal action to remove union leaders for alleged fiduciary breach.

In formally responding to the Subcommittee's interim report, the Labor Department, in a letter of July 9, 1981, again rejected the recommendation. The letter, signed by Secretary Raymond J. Donovan, said the department did not have lawful authority to carry out the Subcommittee's recommendation.

[2/] Ibid., p. 14.

XIV. Final Report Of Subcommittee On Labor Inquiry

The final report of the Subcommittee regarding the Labor Department's investigation of the Teamsters Central States Pension Fund was filed on August 3, 1981 by Senator Roth, the Chairman, on behalf of himself, Senator Nunn, the Ranking Minority Member, and other Members of the Subcommittee.

The Subcommittee pointed out that the Labor Department's inquiry did lead to four positive results:

1. The department was successful in clearing the board of trustees of men who were alleged to have abused their fiduciary trust.

2. The department was successful in removing most of the fund's assets from the hands of the trustees and placing them in the control of independent asset managers.

3. In the period beginning in late 1975 to January of 1981, the fund's financial picture improved considerably.

4. The Labor Department instituted a civil suit to obtain recovery of funds lost due to alleged mismanagmeent.

However, after citing the positive results of the investigation, the Subcommittee criticized the Labor Department's handling of the inquiry on a wide variety of points.

The Subcommittee disagreed with the Labor Department's "narrow and limited" investigative approach. Because the investigation was so narrow, it was ultimately doomed to fail. The Subcommittee said the Labor Department failed to provide for long-term reform and protection of the fund. The department's limited approach brought temporary relief without treating the underlying problems, the Subcommittee said, listing these specific shortcomings in the department's effort:

1. The investigation was incomplete.

2. Third party investigation was limited and eventually called off.

3. There was a lack of coordination with the Justice Department.

4. There was a deemphasis on criminal matters.

5. Inexperienced personnel were permitted to take control of the investigation.

6. The Labor Department failed to obtain any enforceable agreement with the fund.

7. Despite the fact that the Labor Department succeeded in removing the trustees, it left the fund vulnerable by failing to take part in, or require the approval of, the selection of the new trustees.

8. Despite the fact that the Labor Department succeeded in bringing suit against fund trustees and officials, it failed to lay the foundation for a successful result in the litigation because it limited the investigation to certain transactions, thereby ignoring many areas of abuse; it limited the suit to fund officials and failed to pursue culpable third parties; and it failed to name financially secure defendants who could reimburse the fund.

The Subcommittee report went on to say:

> The Department of Labor's approach to attempting to protect fund assets was incomplete and inconsistent with well recognized investigative techniques. The narrow approach employed by the Department of Labor failed to achieve the lasting results necessary to reform the fund and protect the beneficiaries. It also ignored the pervasive evidence of organized crime's influence over the fund.[1]

This last point -- the assertion that the Labor Department ignored pervasive evidence of organized crime's influence over the fund -- was one of particular concern to this Subcommittee, which, along with its jurisdiction in labor-management racketeering, is also charged with the duty to investigate organized and syndicated crime.

Because of its own experience in the field of organized crime, the Subcommittee was aware of the many long standing links between the Central States Pension Fund and some of the nation's most notorious organized crime figures.

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[1] "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund," report of the Senate Permanent Subcommittee on Investigations, August 3, 1981, p. 168.

The Subcommittee was not alone in noting the connections of organized crime figures to the Central States Pension Fund. It was also a point made in January of 1975 in a study prepared by the Labor Department. The study, based on information already contained in Labor Department files, provided a primer on the extent to which organized criminals were believed to have infiltrated the pension fund.

Disclosed in the study were multimillion dollar loans the fund had made to hotels, resorts and other entities which had gone bankrupt; loans to high risk gambling establishments and resort developments; and several major prosecutions which had been mounted by the federal government against organized crime figures associated with the pension fund.

Describing Morris Shenker,Jimmy Hoffa's lawyer, as a "well known St. Louis attorney who is a millionaire as a result of his dealings with the pension fund," the study went on to note the ties to the fund of men like Shenker, Allen Dorfman,Allen Robert Glick, Alvin Baron, Irv Weiner, the later Irvin J. Kahn and other persons reputed to be affiliated with mobsters.

The Labor Department study said the fund would not reform itself. It summed up the problem this way:

> Events...indicate that there will be no change in the operation of the fund, since the lending policies have not changed. In spite of the scandals, criminal prosecutions, bankruptcies and widespread involvement of criminal syndicates in the operation of this fund, it continues to operate as before. It would appear that the continuation of the lending policies, the makeup of the trustees, and the continuing presence of people such as Allen Dorfman, Al Baron, Morris Shenker, etc., will guarantee that the funds intended for the pensions of the Teamsters will be in jeopardy.[2/]

The Subcommittee's investigation and hearings demonstrated in clear terms the effort by the Labor Department to avoid any aspect of inquiry that might have resulted in the development of information of a criminal nature.

2/ *Ibid.*, p. 162.

The department's inquiry was begun in late 1975 under the direction of experienced Justice Department lawyers who had thought that developing criminal information was part of their assignment. However, during the first year of their work it became more and more apparent to them and their associates that the Labor Department had no intention of allowing criminal cases to be developed. For that reason, and several others, the officials heading up the inquiry resigned from the Labor Department.

The Investigations Subcommittee was also misled as to the intentions of the Labor Department. The Subcommittee received testimony indicating that criminal information would be developed and referred to the Department of Justice. This assurance was given the Subcommittee in an executive session briefing on December 11, 1975 by James D. Hutchinson, Administrator of the Pension and Welfare Benefit Programs in the Department of Labor.

From the Subcommittee's point of view, there was a flaw in the Labor Department's policy on criminal investigation as expressed by Secretary Marshall and Monica Gallagher. The flaw was seen in the fact that ERISA and other federal statutes gave the Labor Department access to welfare and pension trust funds. No other component of the government had that access. The department should use that access to develop more criminal cases whenever appropriate.

Moreover, no other component of government had the knowledge of welfare and pension trust funds that the Labor Department had. A competent Labor Department investigator was the best trained, best equipped and the most experienced person in government to make inquiry into welfare and pension trust funds.

The Subcommittee believed that it was required of the Labor Department that it make every effort to detect and investigate crime in trust funds; and then that it formally refer the results of its investigations to the Justice Department. The Subcommittee made this point in its final report on the Central States Pension Fund investigation.

The failure of the Labor Department to carry out its responsibilty to detect, investigate and properly refer to the Justice Department allegations of criminal wrongdoing resulted in an historic lost opportunity, the Subcommittee noted, saying:

> On balance, the [Labor] Department's investigation was a failure because the real villains in the affair -- the reputed organized criminals who systematically looted the fund of millions and millions of dollars for the past two decades -- were not brought to justice. Their names were rarely referred to Justice. Nor were they subjected to civil liability.
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> To Secretary Marshall this was strictly a civil matter. The only problem with the fund was one of possible civil violations of ERISA. To this Subcommittee's thinking, it was an inept, narrow, naive approach.
>
> It is regrettable that the Labor Department, from January 1977 to January 1981, was guided by a policy that interpreted the ERISA statute with tunnel vision. The department's narrow interpretation of ERISA ignored the spirit and intent of the statute and made a mockery of the Congress's primary purpose -- to protect the interests of union members and fund beneficiaries.[3]

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[3] Ibid., pp. 178, 179.

XV. Subcommittee Hearings On Waterfront Corruption

Waterfront corruption was the subject of six days of hearings the Subcommittee held in February of 1981. The hearings showed that corrupt practices were commonplace on the East Coast and Gulf Coast docks and that the U. S. Department of Labor had not taken the initiative in trying to bring reform to the waterfront.

Witnesses at the hearings cited criminal activity within the International Longshoremen's Association and the American shipping industry. They described the struggle for economic survival in ports that were riddled with a pervasive pattern of kickbacks and illegal payoffs to union officials.

Witnesses testified that payoffs were a part of virtually every aspect of the commerical life of a port. Payoffs insured the award of work contracts and continued the life of contracts already awarded, according to witnesses.

Payoffs were said to have been made to insure labor peace and to allow management to avoid future strikes. Payoffs were reportedly made to control a racket of workmen's compensation claims. Payoffs were reportedly made to expand business activity into new port and to enable companies to circumvent work requirements.

Organized crime, in the form of La Cosa Nostra or Mafia crime families, was found to have significant influence in the operation of the ILA and several shipping companies.

Some shipping firms, because of fear or a willingness to participate in highly profitable schemes, were shown to have learned how to prosper in the corrupt waterfront environment. They were shown to have treated payoffs as a cost of doing business, a cost they were said to have passed on to consumers.

The Subcommittee received testimony indicating that the free enterprise system had been thrown off balance in the shipping industry. Contracts were not awarded on the basis of merit. The low bid did not win out over the competition. Profitability was not based on efficiency and hard work but rather on bribery, extortion and questionable connections.

Testimony indicated that much of the corruption on the waterfront stemmed from the control organized crime families exercised over the ILA, a state of affairs that reportedly had existed for at least 30 years.

In the mid-1950's, the Senate Select Committee on Improper Activities in the Labor or Management Field looked into labor racketeering on the eastern docks.

Pointing to allegations of corruption on the waterfront, the Subcommittee noted that many ILA leaders had criminal records. Thomas (Teddy) Gleason, who was General Organizer of the ILA at the time, testified with Captain William V. Bradley, who was then ILA president.

Gleason and Bradley told the Subcommittee they were doing the best they could with their union and that it was not their job to run a police department that made crime fighting its top priority.

Gleason, president of the ILA since 1963, appeared before the Subcommittee in February of 1981 and again defended his union against charges that it was controlled by organized crime figures. He said:

> In regard to the information reported in the press about the ILA being dominated by organized crime figures, I am here today to deny that, emphatically, categorically and without any reservation whatsoever.[1]

Gleason went on to say that witnesses before the Subcommittee had asserted that the ILA was controlled by gangsters but that nowhere in the hearing record was there evidence to support such allegations. Gleason said:

> You have up to now drawn or permitted to be drawn an inference that the union and I are so dominated [by organized crime]. There is no direct, unequivocal, or reliable evidence of any such dominance. Certainly none has been produced here.[2]

1/ Hearings, "Waterfront Corruption," Senate Permanent Subcommittee on Investigations, February 17, 18, 19 and 25, 26, 27, 1981, p. 458.

2/ *Ibid.*, p. 458.

Gleason's protestations were countered by considerable testimony and evidence indicating that certain ILA locals were controlled by organized crime figures. In his own situation, Gleason reluctantly admitted that in an appearance before a federal grand jury examining waterfront corruption that he had refused to testify, invoking the Fifth Amendment privilege against self-incrimination. He said:

> I went before the grand jury in New York. On the advice of my counsel, I exercised my constitutional right.[3]

Gleason was shown a chart naming and identifying more than 20 ILA leaders who had been convicted in the government's union racketeering, or UNIRAC, investigation and proseuctions. Among the convicted ILA leaders were Anthony Scotto, General Organizer and president of Brooklyn Local 1814; George Barone, International Vice President and president of Miami Local 1922; seven other International Vice Presidents; and several other officers of the International.[4]

Another revelation that came out of the government's inquiry was the extent to which senior officers of the ILA were controlled by organized crime figures.

Certain senior ILA officers were found to be "made" or inducted members of organized crime families or family associates. Court-authorized electronic surveillance revealed many corrupt acts by ILA leaders and was persuasive in demonstrating the organized crime ties certain ILA leaders had.

William H. Webster, Director of the Federal Bureau of Investigation, testified that the intrusion of organized crime figures into the ILA had been a calculated and largely successful effort by the mob to take over the union. Webster said:

> The scope of this waterfront conspiracy is now quite clear. Organized crime had seized control of major elements of the ILA and they had done so with impunity. Whether responding out of fear, mere weakness or the promise of

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[3] Ibid., p. 468.

[4] Ibid., pp. 189, 190

> unlawful gain, many elected officials of this important union betrayed the trust of the members whom they represented and opened their organizations to the control of the professional criminal.[5]

Webster said the corrupt union officers could not have gotten away with their profitable schemes for as long as they did had they not had willing accomplices in the management of the shipping companies. Webster said some executives found it easier to make cash payoffs and pass on the resulting costs to the public rather than to fight the system. He added:

> In some instances, we found that industry officials did not wait for the solicitations of union officials but rather adopted an aggressive posture and sought to make payoffs in an effort to gain an unlawful advantage over their competitors.[6]

Testimony from businessmen who had been victimized by waterfront corruption and from federal prosecutors indicated that the Labor Department appeared to have taken no initiatives to try to rid the docks of corrupt practices.

S. Michael Levin, attorney in charge of the Organized Crime Strike Force in Miami, was involved in the UNIRAC investigation and prosecution. Levin told the Subcommittee that he found no evidence that the Labor Department had ever addressed the problem of labor racketeering on the waterfront. He said:

> With regard to the latter question, whether or not the Labor Department had been addressing the problem with respect to the waterfront industry, specifically the ILA, the answer is we found no evidence of that in our investigation. As far as their participation in the [UNIRAC] investigation is concerned, no, they [the Labor Department] did not participate in the investigation. However, we do have good relations with Office of Inspector General who have about five agents,five personnel at this time assigned to the Miami area.
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> It was just not appropriate to have them working in this investigation at that time, but the overall big question, Has the Department of Labor addressed the problem: The answer is no.[7]

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[5] Ibid., p. 10.

[6] Ibid., p. 11.

[7] Ibid., p. 36.

Levin said the FBI did not have sufficient resources to constantly monitor the waterfront for signs of widespread corruption. The Labor Department was better equipped to do the job, he said, adding that the UNIRAC prosecutions "should catch the Department of Labor's attention to monitor what is going on in that industry."[8/]

Neal L. Harrington, chief executive officer of a Miami shipping company that was caught up in waterfront corruption, decided to cooperate with the government and gave testimony in successful prosecutions of ILA officials.

Harrington said he rarely saw Labor Department representatives on the Miami waterfront and that when he did hear from them they impressed him as being preoccupied with protecting the rights of labor unions.

Impatient with suggestions that the Labor Department would ever assume a more constructive role on the docks, Harrington said his recommendation was that the department be abolished.[9/]

Walter D. O'Hearn, president of a stevedoring company in Brooklyn, said his firm was on the verge of bankruptcy because of the high costs of a workmen's compensation racket that was controlled by organized crime figures in league with the ILA.

O'Hearn told the Subcommittee that he asked the Labor Department for help. After hearing details of the racket from O'Hearn, the senior Labor Department official in the area explained to him that he "knew something was going on." But, O'Hearn recalled, the officials said he "felt there was little that the department could do about it, given the provisions of the act."[10/]

The fact that the Labor Department administered the workmen's compensation program under the Longshoremen's and Harbor Workers' Act did not lead the official to feel the department could do anything to stop the racket.

8/ *Ibid.*, p. 37.

9/ *Ibid.*, p. 98.

10/ *Ibid.*, pp. 386, 387.

O'Hearn said the law placed the burden of proof not on the workmen claiming injury but on the employer, who had to show that the injury was feigned or exaggerated. He said the Labor Department's approach in evaluating claims was to support the workers' claims, even though there was mounting evidence that millions of dollars in claims were fraudulent. O'Hearn told the Subcommittee:

> The general attitude of the Department of Labor in administering the act has been one which favors workers over employers. By virtue of that attitude, the presumption of validity under the act has been seriously overplayed, even in the face of the astronomical rise in insurance and claim costs.[11]

O'Hearn said that when the Labor Department could not help, company officials solved the problem themselves. They began paying off Anthony Scotto, president of Brooklyn ILA Local 1814, $5,000 a month, with an additional payoff at Christmas, and almost immediately the workmen's compensation claims declined to a more reasonable level.

Workmen's compensation costs rose from $230,000 a year in 1972 to $1.4 million in 1974. Then, O'Hearn began making the payoffs to Scotto. The claims began dropping and by 1978 they were down to $375,000. O'Hearn said he gave Scotto 18 payoffs totalling $210,000.[12]

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[11] Ibid., pp. 390, 391.

[12] Ibid., p. 388.

XVI. Labor Racketeering Act of 1981

As a result of the Subcommittee's investigations into pension fund and welfare benefit plan fraud and waterfront corruption, legislation was introudced by Senator Nunn, the Ranking Minority Member; Senator Rudman, the Vice Chairman; and Senator Nickles, the Chairman of the Subcommittee on Labor and Human Resources Committee.

The measure, S. 1163, the Labor Racketeering Act of 1981, is designed to help ease the problems of corruption in unions and benefit and pension plans. It increases criminal penalities for violations of the Taft-Hartley Act and provides for the immediate suspension of convicted persons from union offices.

Labor payoffs under current law are punishable only as misdemeanors. The Nunn-Rudman-Nickles measure would make any payoff of more than $1,000 a felony, punishable by up to five years in prison or a fine of up to $15,000, or both.

The bill also attempts to rid labor organizations and employee benefit plans of the influence of persons convicted of criminal offenses. Current disbarment provisions (29 U.S.C. 504 and 29 U.S.C. 1111) are expanded by enlarging the categories of persons affected by the disbarment provisions; increasing the duration of time of the disbarment from five years to ten; and providing for disbarment immediately upon conviction, rather than after appeal.

The bill provides the salary otherwise payable would be placed in escrow pending the appellate process.

The measure clearly spells out the responsibility and authority of the Department of Labor to actively and effectively detect, investigate and refer for prosecution evidence of criminal activities in union benefit and pension plans.

PREPARED STATEMENT OF GREGORY J. AHART, DIRECTOR, HUMAN RESOURCES DIVISION, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and
Members of the Subcommittee

We are pleased to appear here today to discuss our review of the Government's investigation of the International Brotherhood of Teamsters' Central States, Southeast and Southwest Areas Pension Fund (the Fund)--one of the largest private pension funds in the nation.

At December 31, 1980, the Fund had about $2.9 billion in assets. The Fund's membership was almost 511,000 active participants and retirees receiving benefits at December 31, 1979. Employer contributions totaled almost $607 million and pension payments totaled about $349 million in 1979. The Fund has an unfunded liability, for current and future plan benefits, of $7.6 billion at January 1, 1979. 1/

For many years the Fund's trustees have been a subject of controversy and allegations of misusing and abusing the Fund's assets, and making questionable loans to people linked to organized crime. Consequently, in mid-1975 the Department of Labor initiated an investigation to determine whether the Fund was being administered in a manner consistent with the fiduciary and other requirements of the Employee Retirement Income Security Act (ERISA). At that time, the Internal Revenue Service (IRS) had an investigation of the Fund in process which it had started in 1968.

1/The unfunded accrued liability represents a pension plan's liability for pension benefits for all present members, active and retired (and their beneficiaries) and future administrative expenses in excess of the value of the plan's assets.

At the time Labor initiated its investigation, the Senate Permanent Subcommittee on Investigations was considering starting its own investigation of the Fund. But, to avoid duplicating and possibly complicating Labor's work, the Subcommittee deferred its investigation. However, as the investigation proceeded the Subcommittee was not satisfied with the information Labor provided or the progress of the investigation. The Subcommittee, therefore, requested the General Accounting Office (GAO) on June 13, 1978, to undertake a comprehensive review of the adequacy and effectiveness of Labor's investigation including its coordination with IRS and the Department of Justice.

HIGHLIGHTS OF GAO REVIEW

Labor's investigation of the Fund is over 6 years old and to September 30, 1981, has cost about $8.5 million. IRS' and Justice's investigations are older, but the cost figures are not available.

Labor's and IRS' investigations disclosed that former Fund trustees and officials mismanaged Fund assets and failed to prudently carry out their fiduciary responsibilities and had not operated the Fund for the exclusive benefit of plan participants and beneficiaries--as required by ERISA. On June 25, 1976, IRS revoked the Fund's tax-exempt status.

Before restoring the Fund's tax-exempt status, Labor and IRS in April 1977 imposed several demands on the trustees to reform the Fund's operations. The trustees agreed to the demands and made several significant changes. The most significant were the trustees' (1) appointment of independent investment managers to manage most of the Funds' assets and investments, and (2) adoption of amendments to have the Fund conform to ERISA and the Internal Revenue Code.

Also, Labor's investigation resulted in the Secretary of Labor filing a civil suit in February 1978 against 17 former trustees and two former officials to recover losses that resulted from alleged mismanagement, imprudent actions, and breaches of fiduciary duties. 1/

1/Donovan v. Fitzsimmons et. al., C.A. 78-C-342, USDC, N-D-ILL.

Our review disclosed that despite apparent benefits, Labor's investigation and subsequent Labor and IRS dealings with Fund trustees had significant shortcomings and left unresolved problems. We found shortcomings and deficiencies in (1) Labor's investigative efforts, (2) Labor's coordination with IRS and Justice, (3) Labor's and IRS' dealings and agreements with the trustees in reforming the Fund, and (4) Labor's and IRS' monitoring of the current trustees' operations and compliance with the conditions for requalification imposed by the Government.

Thus, we question whether the benefits obtained and improvements imposed by the Government will result in lasting reforms without the the continued diligent efforts of Labor and IRS. In fact, as a result of the curent trustees' failure to comply with the conditions for requalification, Labor renewed its investigation of the Fund on April 28, 1980. IRS, after obtaining a court order requiring the Fund to comply with its summonses, also resumed its onsite investigation in about July 1980.

At the Subcommittee's request, the former Comptroller General, Elmer B. Staats, and other GAO representatives, in August and September 1980, testified before the Permanent Subcommittee on our preliminary findings and conclusions. Subsequently, the Permanent Subcommittee on August 3, 1981, issued a report on its "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund." 1/ The Subcommittee's report discussed inadequate staffing and coordination, and management problems, similar to those noted in our review, in Labor's and IRS' investigation.

Since the hearings and the Subcommittee's report, we have up-dated our findings and conclusions, and developed recommendations. We have prepared a draft report and on October 7, 1981, we provided a copy of the draft to you and Senator Nunn, Ranking Minority Member, pursuant to your requests. Also,

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1/See Senate Report 97-177, 97th Cong. 1st Sess., August 1981.

on October 8, we sent copies of our draft report to the Secretary of Labor, the Commissioner of Internal Revenue and the Attorney General for comment. We have also sent a copy of the draft to the Fund.

Our draft report has not been fully reviewed within GAO and we have not yet received the agencies' formal comments. Therefore, I would like to caution that the draft, including the recommendations which are discussed below, are subject to revision.

UNSUCCESSFUL ATTEMPT TO HAVE GOVERNMENT-WIDE COORDINATED INVESTIGATION

Labor's objective of having a Government-wide coordinated investigation did not succeed because IRS refused to participate in a joint investigation. IRS' "go it alone" attitude and unwillingness to join the investigation did not adversely affect Labor's investigation until IRS decided on June 25, 1976, without prior notice to the Fund or Labor, to revoke the Fund's tax-exempt status.

IRS' action disrupted Labor's investigation and according to Labor officials created a "chaotic situation". IRS' action also adversely affected the Fund's cooperation with Government investigators. Labor officials said they had to spend more time trying to resolve their coordination and cooperation problems with IRS and the Fund than on the investigation.

IRS' explanation that it was pursuing a different course than Labor is not borne out by the facts. For example the Chicago district director's June 25, 1976, letter disqualifying the Fund was based, in part, on alleged imprudent practices by the trustees or fiduciary violations, the very same area Labor was investigating.

LABOR'S INVESTIGATION NARROWLY FOCUSED ON REAL ESTATE LOANS AT THE EXPENSE OF OTHER AREAS OF ALLEGED ABUSE

Labor's investigation disclosed many significant problems in the former trustees' management of the Fund's operations. However, Labor narrowly focused on the Fund's real estate mortgage and collateral loans because of the significant dollar amounts involved and Labor's primary goal of protecting and preserving the Fund's assets. This single purpose, in Labor's opinion, may have been justified; however, in our view, this approach ignored other areas of alleged abuse and mismanagement of the Fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement raised by Labor's own investigators.

Labor's investigation was also incomplete. Labor targeted for investigation 82 of the Fund's 500 loans. Labor's investigation found apparent significant fiduciary violations and imprudent practices by the former trustees on many of the 82 loans. Labor terminated its investigation of the asset management procedures at the Fund even though the investigators did not complete planned third-party investigations on many of the 82 loans.

We believe that Labor lost an opportunity during its investigation when it failed to complete the third-party investigations. This omission may have precluded Labor from obtaining valuable information needed for its investigation as well as information on potential criminal violations.
In our opinion, the fact that Labor had to resume an on-site investigation at the Fund is persuasive evidence of the inadequacies and shortcomings in Labor's original investigation.

LABOR'S INVESTIGATION HAMPERED BY POOR MANAGEMENT, INEFFECTIVE INTERNAL COORDINATION, AND STAFFING PROBLEMS

Until Labor abolished the Special Investigations Staff (SIS) in May 1980, SIS was responsible for the investigation of the Fund. Although the Congress gave Labor the 45 staff positions it stated was needed by SIS to make the investigation of the Fund's pension and health and welfare funds in an adequate and timely manner, Labor later reduced the SIS staff allocation to 34. Further, SIS never filled all of its positions. Had SIS filled the 45 authorized permanent positions, we believe it would have been able to review some of the unresolved areas and complete more third-party investigations.

SIS' professional staff for the most part appeared experienced. However, Labor failed to (1) adequately train SIS personnel in areas related to the investigation, (2) maintain an effective work environment which adversely affected the morale of SIS personnel, and (3) ensure effective coordination between SIS and the Solicitor's Office. Consequently, we believe that these shortcomings significantly weakened and adversely affected SIS' ability to conduct an effective investigation. Labor's shortcomings also contributed significantly to the problems SIS experienced in managing the investigation, and to the ineffective coordination, and poor working relationship with the Solicitor's office.

An internal Labor management report of May 1979--the so called Kotch-Crino report--confirmed the significant management problems and concluded that SIS was seriously hampered by a lack of leadership and supervision, by mismanagement and by poor administration. The report stated "future SIS effectiveness is doubtful." SIS was abolished in May 1980.

LABOR FAILED TO ADEQUATELY COORDINATE WITH JUSTICE

Notwithstanding memorandums of agreement to coordinate their efforts at the Fund, Labor and Justice had continuing coordination problems which restricted the flow of investigative information from Labor to Justice. Also under the agreements, Labor was to refer to Justice all information relating to potential criminal violations for use in Justice's criminal investigation activities. In 5 years of investigative activity, Labor made 11 formal referrals of loan information to Justice which had potential for criminal investigation. Labor and Justice officials stated that much other loan transaction information was discussed informally during meetings.

Justice officials told us, however, that overall Labor's information was not useful in its criminal investigation efforts. In fact, as of June 23, 1981, Justice officials stated that since Labor's investigation started in 1975 only one case resulted in a criminal indictment and conviction. The other cases were closed primarily because of the Government's inability to substantiate a criminal violation.

The Kotch-Crino report also cited coordination problems similar to those we found, such as Labor (1) restricting the flow of information to Justice and (2) denying Justice officials summaries prepared by Labor's attorneys. The report characterized the latter point as a significant problem area and a "major" irritant to Justice.

Labor and Justice officials testified in Congressional hearings in March 1/ and August 2/ 1980 that coordination problems existed in the past but that cooperation between the two departments is now more effective. However, as indicated by our review--and the Kotch-Crino report--Labor and Justice experienced continuing coordination problems despite several agreements and despite working group committees.

Recommendations to the Secretary of Labor and the Attorney General

Accordingly, we are recommending that the Secretary and Attorney General take action to have their December 1978 coordination agreement revised to define the "higher officials" who should or would resolve the litigation strategy problems the working group members cannot resolve, or in lieu of this, consider reestablishing an Interdepartmental Policy Committee similar to the one established in 1975. To ease another continuing coordination problem, we are recommending that the (1) Secretary emphasize to the Solicitor's Office the need for Labor to fully cooperate with Justice's Criminal Division by providing attorney analyses on various Fund transactions which indicate potential criminal violations and (2) Attorney General caution

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1/Hearings on Review of progress on Teamsters' Central States Pension Fund Reform before the Subcommittee on Oversight, House Comittee on Ways and Means, 96th Cong., 2nd Sess. (March 24, 1980).

2/Hearings on Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, 96th Cong., 2nd Sess. (August 25, 26, September 29 and 30, 1980).

the Justice attorneys that these are internal drafts and should be treated as such.

We are also recommending that the Secretary direct the Solicitor's Office to carry out the recommendations in the Kotch-Crino report to honor the memorandum of understanding (agreements) with Justice, by (1) establishing a formal written system of referring potential criminal violations to Justice, (2) suggesting a single Justice coordinator for all Fund activities, (3) establishing procedures wherein Justice periodically orients and briefs Solicitor Office officials, (4) suggesting one designated person in Justice to receive all Fund records, and (5) establishing a system wherein the Solicitor's Office forwards to Justice pertinent additional records regarding any matter previously referred.

LABOR AND IRS DID NOT REQUIRE A WRITTEN AGREEMENT IN RESTORING THE FUND'S TAX-EXEMPT STATUS AND DID NOT PLAY A ROLE IN SELECTING FUND'S NEW TRUSTEES

IRS, on June 25, 1976, without prior notice to Labor, revoked the Fund's tax-exempt status. However, IRS after reconsidering the impact of its unilateral action on the Government's investigation agreed to fully coordinate with Labor in August 1976. The agencies had extensive discussions and considered many options--from a court-enforced "consent decree" 1/ to requiring a neutral board of trustees--in reforming the Fund and having IRS restore its tax-exempt status.

IRS restored the Fund's tax-exempt status in April 1977. But, rather than have the trustees enter into a written agreement, IRS--with Labor's approval--based the requalification on the trustees' oral agreement to operate the Fund in accordance with ERISA and to comply with eight specific conditions prescribed by Labor and IRS. (See the appendix for the eight conditions.)

1/A consent decree is an order of preliminary or permanent injunction entered by a court of competent jurisdiction on the basis of the Government's complaint, the consent of the defendent to the entry of a decree embodying certain relief (usually without admitting or denying the allegations of the complaint), and an agreed form of judgment.

Early in the investigation, Labor proposed reforming the Fund's operations through a legal undertaking, such as having the Fund operated pursuant to a court-enforced "consent decree". However, Labor officials dropped this approach after the trustees agreed to restructure the board of trustees from 16 to 10 members and 12 of 16 trustees resigned.

The four remaining trustees later resigned as a condition for requalification of the Fund's tax-exempt status. However, Labor and IRS did not play an active role in the selection of the four new trustees even though they had developed qualifications the new trustees should meet, and Labor knew that some of the former trustees--who allegedly mismanaged the Fund--were members of the Teamsters' union organizations that apparently selected some of the new trustees.

We question whether the reforms and changes that Labor and IRS required the trustees to make in the Fund's operations were the best the Government could have achieved and the most advantageous for the Fund and its plan participants. In our opinion, Labor and IRS' findings of mismanagement and abuse by the former trustees and IRS' action of removing the Fund's tax-exempt status gave the Government a strong bargaining position and advantage in its dealings with Fund officials. However, Labor and IRS in the final negotiations with the trustees may not have gained lasting reforms and improvements to the Fund's operations or removed the influence and control exercised by the former trustees.

We believe also that Labor's and IRS' decision not to require the trustees to enter into a written agreement may not have been prudent. Without such an arrangement or a court enforceable consent decree, Labor and IRS did not have the leverage they might have had to require the trustees to adhere to the conditions. As the record shows, the current trustees did not satisfy all of the conditions the Government imposed when IRS requalified the Fund, and another investigation was needed.

Further, we believe that Labor's and IRS' decision not to play an active role in selection of successor trustees was shortsighted, particularly in view of the Fund's history of controversy and dissatisfaction expressed with the trustees, both within and outside the Teamsters' organization. Concern was expressed about the influence of the former trustees over selection of the current trustees, which Labor dismissed as being unimportant. However, Labor belatedly recognized, and became sufficiently concerned over, the former trustees' influence and actions of the current trustees, to resume its investigation.

Recommendation to the Secretary of Labor and the Commissioner of Internal Revenue

In view of the continuing concern over the influence and control of the current trustees and the Fund's operations by the former trustees, we are recommending that the Secretary and Commissioner (1) establish criteria and qualifications requiring that future Fund trustees be independent, professional, neutral, etc.; (2) closely monitor the selection of future trustees; and (3) veto the selection of a trustee not meeting the criteria.

TRUSTEES TRYING TO REASSERT CONTROL OVER FUND'S ASSETS AND INVESTMENTS

As another condition for requalification, in June 1977, the trustees, appointed independent investment managers--the Equitable Life Assurance Society of the United States and the Victor Palmieri Company--to handle most of the Fund's assets. Both Equitable and Palmieri appear to be successfully managing the assets and investments. As a result, at the end of calendar year 1980, the Fund's (1) investment portfolio had been shifted from principally real estate mortgage and collateral loans to principally stocks and other securities, (2) assets grew from $1.6 billion to $2.9 billion, and (3) investment income grew from $73 million to $151 million annually.

Despite Equitable's and Palmieri's performances, the trustees have attempted to reassert control over the Fund's assets by (1) trying to compromise the managers' independence, (2) hiring their own staff of real estate analysts, and (3) trying to terminate the services of Palmieri because the firm refused to renegotiate the fixed management fees.

Although Equitable handles the Fund's assets and investments, the Fund's trustees still control all of the moneys the Fund receives, and decide how much should be retained in the Benefits and Administration Account (B & A account). The trustees were supposed to use the B & A account to (1) record the employers' contributions, (2) pay the employees' benefits and the Fund's administrative expenses, and (3) maintain an appropriate reserve for the Fund. The remaining moneys were to be given to the independent managers for investments.

However, the trustees have retained a significant amount of moneys in the B & A account. For example, there was $142 million in the account at December 31, 1979. According to Labor, the trustees have imprudently attempted to use the moneys in the B & A account to make a $91 million questionable loan to settle a court suit.

Congressional committees, including the Permanent Subcommittee, have expressed concern about the funds still controlled by the trustees. The Secretary of Labor and other Labor officials testified that Labor would continually monitor and review the trustees' handling of the account. We found, however, that Labor and IRS have not adequately monitored the trustees' control over the B & A account.

We believe that Labor and IRS need to take action above and beyond the conditions required by the April 1977 agreement to remove the trustees' control over, and influence on, all the moneys the Fund receives. Labor and IRS should consider proposing a reorganization of the way the Fund handles and controls the employers' contributions and other monies, to remove the trustees' control over any of these funds.

We believe that any agreement that Labor and IRS negotiate with the Fund's trustees should be in a formal written document document, agreed to and signed by Labor and IRS and the Fund's trustees. Such a document would insure that the Government's position is clear and unequivocal, and would, in our opinion, help assure that further reforms are lasting.

Recommendations to the Secretary of Labor and the Commissioner of Internal Revenue

To help assure that the Fund is operated and managed prudently and for the exclusive benefit of the plan participants and beneficiaries, as required by ERISA, we are recommending that the Secretary and Commissioner obtain a commitment from the trustees that the Fund will (1) continue to have an independent investment manager to control and manage the Fund's assets and investments after the present managers' contracts expire in October 1982, and (2) use the same selection criteria and qualifications as in the past--independent, professional expertise and national stature--should the trustees decide to replace the present investment managers after October 1982.

We are further recommending that the Secretary and Commissioner consider obtaining a further commitment from the trustees to reorganize the way the Fund handles and controls the employer contributions and its other moneys to remove the trustees' control over these funds. The proposed reorganization should provide for

--the Fund to employ a financial custodian--and independent bank or other financial institution--with professional expertise and national stature, to receive and control all moneys due the Fund, pay the Fund's administrative expenses and pension benefits, retain an appropriate reserve, and turn over the remainder to the investment managers;

--IRS and Labor to have a veto power over the selection of the independent investment manager and financial custodian, if the trustees selections do not meet the Government's qualifications; and

--limiting the trustees' role and responsibilities to establishing overall investment objectives, determining eligibility requirements for pension benefits and employers' contributions, monitoring the investment managers' and custodian's activities, and administering relevant collective bargaining requirements.

We are recommending that the Secretary and Commissioner take action to assure that the above proposed reorganization, and any other reforms imposed on the Fund, be included in a formal written, agreement signed and agreed to by Labor and IRS and the Fund's trustees.

Should the Fund trustees refuse to voluntarily conform with the above reforms, we are recommending that the Secretary and Commissioner consider whether such a decision, along with any evidence of misconduct that may be developed during the current investigation, warrants speedy and appropriate litigative action, as authorized by ERISA, against the trustees to require retention of an independent professional manager beyond the October 1982 contract terminations date, and the other, or similar, reforms suggested above.

LABOR AND IRS NEED TO INVESTIGATE UNRESOLVED PROBLEM AREAS OF ALLEGED MISMANAGEMENT

During its original onsite work at Fund headquarters--from January 1976 to May 1977--Labor decided to concentrate its investigation on the practices of Fund fiduciaries to make real estate mortgage and collateral loans. Labor's investigation also identified patterns of apparent abuse of the Fund by former trustees and raised questions of potential criminal violations in the Fund's other operations. However, because of Labor's decision to concentrate on reviewing the Fund's loan activities, these other problem areas went uninvestigated.

IRS has responsibility to assure that the Fund complies with the eight conditions of the April 1977 requalification letter. (See the appendix.) However, IRS was not able to adequately investigate the Fund's activities or compliance after August 1979 because Fund officials notified IRS on August 24, 1979, that they would no longer submit the required progress reports--because they considered the eight conditions substantially satisfied--and the Fund, in effect, barred IRS from conducting audit activities at the Fund's premises. IRS disagreed, and as of August 1980, IRS believed the Fund had satisfied only four conditions--1, 3, 5, and 6. Thus, nearly 3-1/2 years after the requalification, the Fund had complied with only four of the conditions to IRS' satisfaction.

As a result, in April 1980 Labor renewed its investigation at the Fund and IRS, after securing a court order requiring the Fund to comply with the Service's summons and allow it access to Fund records, renewed its investigation in July 1980. We found, however, that the investigations will not cover all of the potential areas of abuse and mismanagement by the former trustees. Also, IRS and Labor said they are coordinating their efforts. But we noted that both agencies issued subpoenas or summonses for the same records and are reviewing the same activities and operations.

Neither Labor nor IRS officials would discuss with us the status of their current investigations. However, on August 18, 1981, Labor filed a civil suit against 1/ 17 defendants who are present trustees and certain attorneys, agents and other Fund fiduciaries, concerning the forceclosure actions on two loans totaling $7 million made to the Indico Corporation, which was secured by certain real estate located in Bay County, Florida. These loans are one of the areas covered in Labor's second investigation. The suit charges that the defendants imprudently caused the Fund to purchase the property, at the foreclosure sale, for $6.7 million, a price far in excess of its fair market value, thereby diminishing possible recovery by the Fund against the debtors and guarantors.

We believe that both Labor and IRS need to take heed of the coordination problems and shortcomings in negotiations with the Fund in the original investigation to assure that these mistakes are not repeated in their current investigations, and in future dealings with the trustees.

Recomemndations to the Secretary of Labor and the Commissioner of Internal Revenue

We are recommending that the Secretary and the Commissioner direct their respective investigative staffs to more closely cooperate to prevent coordination problems, duplication between the investigators and giving the Fund an excuse not to cooperate because the Government is not speaking with one voice. Further, in view of the past controversy over the size and use of the B & A account, we are recommending that the Secretary and Commissioner direct their investigation staffs to review the trustees' management and use of the B & A account to determine the appropriate reserve the Fund should maintain in the account.

We are recommending also that during its current investigation at the Fund, the Secretary direct the Labor-Management Services Administration (LMSA)--which is responsible for the investigation--to

- --Assure that the unresolved matters from the initial investigation are thoroughly investigated and resolved.

  In particular, LMSA should review questions of possible improprieties of payments made to former and current Fund trustees and officials and to service providers, including those made prior to January 1977, and coordinate this work with Justice because of the potential criminal nature of certain transactions.

1/Donovan v. William J. Nellis et. al. C.A., MCA 81-0245, USDC, N-D, Fla.

- --Assure that the LMSA Chicago staff performing the investigation receive proper training, and use all investigative techniques and procedures, in particular third party interviews, to detect and develop potential criminal violations for referrals to Justice.
- --Coordinate its investigation efforts with the Solicitor's Office.

THE FUND'S FINANCIAL SOUNDNESS STILL QUESTIONABLE

ERISA requires that employee pension plans satisfy minimum funding standards each year and that each plan submit an actuarial report. IRS is to use the actuarial reports to enforce ERISA's minimum funding standards and to determine the plan's actuarial soundness. IRS, when it requalified the Fund's tax-exempt status, did not consider the Fund's financial soundness. In fact, IRS' April 1977 requalification letter stated that its determination on the Fund's tax-exempt status is not an indication that IRS was in any way passing on the actuarial soundness of the plan or on the reasonableness of the actuarial computations.

Since 1975, the trustees have had four actuarial valuations of the Fund's financial soundness. The last actuary's report issued on March 3, 1980, stated that the current funding should satisfy ERISA's requirements. However, the actuary said that the funding policy allowed very little margin for error, and if actual experience differed, funding problems would occur after the ERISA standards become effective for the Fund in 1981. The actuary also recommended that the Fund's trustees adopt certain funding positions to assure compliance in future years with ERISA.

Moreover, the actuarial report showed that the Fund's unfunded liability, for current and future pension benefits, had increased to "$7.6 billion."

In our opinion, IRS needs to closely monitor the financial status of the Fund to assure that it meets ERISA's funding standards in 1981 and in future years. IRS' officials testified in 1980 that they intend to monitor the Fund's compliance with ERISA's minimum funding standards when they become applicable in 1981. As part of its monitoring, IRS should review the latest actuarial report on the Fund, ascertain whether the Fund should adopt the actuary's proposal on revising the funding policy, and if so, consider what appropriate action should be taken and is available under ERISA to assure the Fund implements the proposal.

Recommendations to the Commissioner of Internal Revenue

To assure the financial soundness of the Fund and its ability to meet commitments for paying current as well as future pension benefits, we are recommending that the Commissioner direct IRS officials to closely monitor the Fund's financial operations to ascertain that the Fund (1) meets the minimum funding standards of ERISA in 1981 and future years, and if not, take whatever action is needed to assure that the Fund meets the act's requirements, and (2) remains actuarially sound.

EIGHT CONDITIONS IMPOSED ON THE FUND BY IRS AND LABOR ON APRIL 26, 1977 TO RESTORE THE FUND'S TAX-EXEMPT STATUS

1. The trustees amend the trust agreement to have the Fund conform to ERISA and the Internal Revenue Code.
2. The Fund have in operation, not later than December 31, 1977, a data base management system that would be sufficient to determine "credited service" in accordance with the pension plan's requirements for all participants from 1955 to April 26, 1977, inclusive.
3. The Fund review all benefit applications that were originally rejected but subsequently approved to insure that the effective date and amount of benefit payments were in accordance with the plan provisions in effect at the appropriate governing dates.
4. The Fund complete by May 1, 1978, an examination of all Fund loans and related financial transactions from February 1, 1965, to April 30, 1977, to determine whether the Fund has any enforceable causes of actions or other recourse as a result of the transactions.
5. The trustees amend the trust to provide a statement of investment policies and, annually, the trustees provide written investment objectives to the investment manager retained by the Fund.
6. The trustees amend the trust to establish a qualified Internal Audit staff to monitor Fund affairs.
7. The trustees amend the trust to publish annually, in at least one newspaper of general circulation in each State, the annual financial statements, certified by the Fund's Certified Public Accountant.
8. The trustees place all Fund assets and receipts, including moneys derived from liquidation of existing investments (except funds reasonably retained by the Fund for payment of plan benefits and administrative expenses), under direct, continuing control of independent professional investment managers as defined by section 3(38) of ERISA. 1/

1/ERISA defines an investment manager as any fiduciary (other than a trustee or fiduciary of the Fund) who (a) has the power to manage, acquire or dispose of plan assets, (b) is a registered investment adviser under the Investment Adviser Act of 1940, a bank or a qualified insurance company under the laws of more than one state, and (c) has acknowledged in writing that he (it) is a fiduciary of the plan.

PREPARED STATEMENT OF GEORGE W. LEHR, EXECUTIVE DIRECTOR, TEAMSTERS CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS, HEALTH AND WELFARE PENSION FUNDS

Mr. Chairman and members of the Subcommittee,

My name is George Lehr. I am Executive Director of the Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds. I am pleased that the Subcommittee has granted my request to appear here today. I propose to state the intentions and concerns of the Trustees of the Funds, as well as my own, with respect to this Subcommittee's Oversight Inquiry of the Department of Labor's Investigation of The Teamsters Central States Pension Fund, an investigation, I am told, that began January 19, 1976 and continues to date.

I propose today also to review the continuing negotiations the Funds have had since June 19, 1981 with the Department of Labor and the Internal Revenue Service and to discuss the Funds' purpose and progress in the development of a comprehensive settlement proposal guaranteeing that, for a minimum of ten years, Pension Fund assets will continue to remain under the exclusive management and control of the Equitable Life Assurance Society of the United States or other ERISA-qualified independent investment managers either retained by Equitable or approved by the Court after notice to the Secretary of Labor.

As the Senators are aware, the Pension Fund provides retirement benefits to over 400,000 participants and beneficiaries. The continuing objective of the Fund, and the commitment of the Trustees and myself as Executive Director, is that the business of funding and paying retirement benefits and serving our participants be conducted under a professional, efficient and superior management program. The exclusive purpose of the Trustees is to insure that this Fund is one of the finest in the United States, and that its reputation reflects its quality.

Since our responsibility is to administer employee benefits, then a working relationship with government agencies chartered to regulate benefit plans is a sound goal. The Trustees of the Funds desire and are committed to work toward an open and communicative relationship with the Department of Labor and other appropriate governmental agencies. The Trustees' commitment is grounded in the belief that a viable government relationship is in the best interests of the participants, and that after more than five years of the closest scrutiny ever given to any employee benefit plan in the country, the timing is right for productive and beneficial communications.

With confidence in the Pension Fund's operation and in the performance of the professional staff, the Trustees stand ready to participate in a program of communication, cooperation and good-faith dealings with the Department of Labor and other governmental agencies. And, while the Trustees take a strong public posture concerning communication and cooperation, it is appropriate to stress the component of good faith dealings between the parties. Cooperation is a two-way street.

I am not here to hash and re-hash the relationship between the Fund and the Department of Labor in years, and investigations, and lawsuits past. I am here on behalf of the Trustees to suggest a future government-Fund relationship of reasonable men working together to obtain the best managerial and investment performance possible. It is the Trustees' commitment that the merit, accomplishments, and growth potential of the Fund will no longer be ignored or buried under an avalanche of unsupported or irrelevant charges, or pointlessly tied to ancient litigation. This Fund will not be a second class citizen.

A significant step was taken several months ago with the commencement of negotiations between the Fund, the Department of Labor, the Internal Revenue Service and the plaintiffs in pending class action litigation. The Trustees' objective in entering negotiations was to effect a comprehensive settlement of all existing disputes between the Funds, the Department of Labor and the class action plaintiffs. It is my belief that these negotiations are being conducted in good faith by all parties and the results to date have been promising. The subject and status of these negotiations impact on the inquiries of this Subcommittee, and I will briefly describe the components of a comprehensive settlement proposal that the Trustees have submitted to the Labor Department and to attorneys for the class action plaintiffs.

The vehicle proposed by this Subcommittee for a comprehensive settlement of disputes is a consent decree enforceable through the United States District Court. I am pleased to tell you that the Trustees are agreeable to the consent decree format in the belief that is what it will take to achieve a comprehensive settlement. The Trustees and I are aware of this Subcommittee's expressed concern and dissatisfaction with the 1977 settlement between the Fund, the Labor Department and the Internal Revenue Service because the terms were not embodied in a judicially enforceable decree. In light of this Subcommittee's strong recommendation that any 1981 settlement be via a consent decree, the Trustees as a threshold issue are willing to accept that vehicle as a component of settlement.

I believe it is appropriate to note and the record should reflect that a consent decree is not an admission or suggestion of misconduct by the Pension Fund or any person associated with the Fund. Indeed, in light of the present excellent business conditions at the Pension Fund, and I will elaborate on specifics in a moment, we believe that a consent decree is unnecessary to continue to improve the Pension Fund operation. However, an initial concession regarding use of a consent decree was deemed by the Trustees to be the strong good-faith demonstration necessary to get these settlement negotiations on-line, and ultimately to terminate several very expensive adversary proceedings.

Concerning the expense of pending proceedings, I refer to costs of litigation incurred by the Fund, costs incurred by the Department of Labor and the other agencies, costs incurred by the private litigants and a significant drain on judicial resources. I also refer to the intangible costs of drained manpower and time and attention devoted by all parties to maintaining their positions in complex litigation. Senators, I suggest that the Central States Pension Fund and the government agencies that you oversee, working in a climate of reason, can make far better use of their resources.

I appear here today to solicit the interest and attention of this Subcommittee to the Trustees' immediate goals: compromising on a reasonable, Court-approved basis all outstanding litigation and controversies; codifying the Fund's present outstanding and successful asset management and administrative practices and procedures; and turning our entire resources and energies to what must be our full-time job -- serving the needs of our participants.

Having resolved for purposes of negotiation the vehicle of settlement, the next question is the subject, scope and terms of that settlement. As I have indicated, the comprehensive settlement proposal addresses separate areas of dispute. The first item of negotiation is professional and independent management of Pension Fund assets. The settlement contemplates that for the ten-year period of the consent decree, Pension Fund assets will be under the management and control of qualified independent investment managers. The Trustees believe that this proposal satisfies in letter and spirit the concerns expressed by this Subcommittee.

The possibility that the Pension Fund and the Labor Department will develop a comprehensive consent decree is perhaps best addressed with some preliminary reference to the asset management experience of the past several years. The history of the 1977 creation of an independent professional investment manager program to control all investments of the Pension Fund is no secret to the members of this Subcommittee.

During one of many congressional hearings that year, then Labor Secretary Ray Marshall appeared before you on July 18, 1977 and his testimony that day included a description of the contractual relationships formalized 11 days earlier between the Trustees of the Pension Fund, The Equitable Life Assurance Society of the United States (Equitable), Victor Palmieri and Company Incorporated (Palmieri) and other investment managers, adding these observations about the parties and their respective roles (printed record, p. 15):

> "Under the contracts, the trustees, who are chosen by the collective bargaining parties, retain power over those aspects of fund administration that are closely related to labor relations and collective bargaining. For example, the establishment of benefit levels, enforcement of collective bargaining agreement rules, eligibility and benefit payment rules, and the actuarial soundness of the fund.
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> "We believe that the contractual structure provides a sound basis for proper future management of the Central States fund's giant portfolio. It removes entirely asset management control from the trustees, yet retains their authority and power to monitor performance.
>
> "It provides sufficient security for the independent professional fiduciary and the investment managers to insure that they cannot be dismissed at the whim of the trustees, yet permits the trustees to dismiss them for cause. It leaves the affairs of a private sector fund in private sector hands, yet provides for lawfully authorized Government assistance.
>
> "It also contains a triggering device to insure Government oversight in the event the trustees, Equitable or the investment managers need advice or help in matters related to fund management; and it contains great promise of ending, once and for all,

> the years of suspicion, allegations, and demonstrable wrongdoing that have surrounded asset management of the fund and the people associated with it."

In the four years and several months since that testimony, the relationship among the Trustees and Equitable and Palmieri has matured into strong mutual bonds of trust, confidence and harmony. All of the parties to that relationship have for several years recognized that they have formed a joint venture that should be kept alive. If the Equitable arrangement can be fortified by a consent decree that institutionalizes its concept--the concept of independent professional investment managers--as a permanent fixture at the Pension Fund, then it would be foolish, and probably imprudent, to burden the Pension Fund with a consent decree that was only half a loaf - a consent decree that left open sores and painful and costly wounds. If a consent decree can achieve a fair resolution of all government grievances that affect the Fund, and we believe very strongly that it can, then that is the kind of decree needed. It is needed to best insulate the participants and beneficiaries of the Fund from the cost of perpetuating a variety of litigation that, on objective scrutiny, simply cannot be justified on any reasonable cost-to-benefit analysis.

With the growth and maturity of every healthy relationship, areas of improvement are discovered from time to time. In mid-1978 Equitable, in its role as investment "Fiduciary" of the Pension Fund, revised its Investment Policy Statement to state a real estate objective (amendment dated August 14, 1978):

> "Existing real estate related assets will be reduced to not more than 25% of total Pension Fund assets in a gradual and orderly manner without any forced sale of assets..."

While these events of course precede my appointment as Executive Director, the communications from Equitable to the Trustees are a matter of record, and are facts well known to the Labor Department. Thus, for example, it was at a monthly meeting of the Trustees on October 17, 1978 that Equitable disclosed to the Trustees the fact that Equitable had decided to formulate an "ultimate 25% real estate objective", and that Equitable's projection was that the Equitable "25% target (would be) reached about third quarter 1980" (Minutes, Item 12). At a meeting of the Trustees on January 18, 1980 the "25% target" was again addressed (Minutes, Item 10, emphasis added):

> "...Mr. Lopardo (Equitable Vice President Nicholas A. Lopardo) indicated that at mid-1980, presumably having reached the point at which only 25% of 'fiduciary assets' consisted of real estate-related assets, Equitable would begin to consider new real estate investments..."

At a meeting of the Trustees on July 16, 1980 Mr. Lopardo again addressed the subject (Minutes, Item 10, emphasis added):

> "At the meeting of the Trustees and others on July 16, 1980 Mr. Lopardo reported that Equitable estimated the 1980 cash flow of the Pension Fund to be in excess of $450 Million, and therefore new securities specialist managers would be appointed by Equitable. He added that, if the Pension Fund continued to invest in securities and experienced a 6.5% annual rate of return from securities investments, Equitable projected that at the end of 1984 the assets of the Pension Fund would be at $5.5 Billion in securities and $.5 Billion in real estate, or a total of $6 Billion. Mr. Lopardo added that Equitable would be looking 'very, very closely' in the next few months at real estate investments and that Equitable would be coming back to the Trustees on this subject...."

At meetings of the Trustees on August 19 and 20, 1980 Equitable Executive Vice President Leo M. Walsh, Jr. addressed the subject (Minutes, Item 11, emphasis added):

> "...Mr. Walsh reported that, also during July, the percentage of total assets which consisted of real estate-related assets had fallen below the 25% mark.... and also stated that Equitable would report to the Trustees within the next 2 months concerning possible selection of new securities investment managers and possible real estate investment activity...."

At a meeting of the Trustees on September 16, 1980 Mr. Lopardo again reported about the subject (Minutes, Item 9, emphasis added):

> "Mr. Lopardo also made several comments about a Real Estate Acquisition Program to be administered by Equitable: this would be primarily directed to owned real estate, without precluding mortgages. Mr. Lopardo stated that the prior real estate reduction had

> been tied to: (a) diversification and (b) marketability of real estate assets. Now that those *objectives* have been reasonably *satisfied*, he stated, *Equitable feels that involvement in equity real estate investments provides a superior return over a period of time and also provides a hedge against inflation, with better results in that respect than common stocks*. Most of the investment return in the real estate program, he said, will come from income as distinct from appreciation...."

At a meeting of the Trustees on December 17, 1980 Mr. Lopardo again addressed the subject (Minutes, Item 10, emphasis added):

> "With respect to future real estate investments Mr. Lopardo stated that Equitable was trying to finalize its thoughts on how it *would move into real estate* in 1981, stated that Equitable was probably going to be in the equity side of the real estate market and stated that Equitable was seeking a 22-25% level of real estate investment."

According to Equitable, as of November 30, 1980, real estate-related assets were 22.1% of all assets of the Pension Fund under jurisdiction of Equitable as "Fiduciary."

The plan and direction of the *new* Real Estate Acquisition Program, charted for the Pension Fund, by Equitable, one of the most if not *the* most respected and prominent real estate investors in America, is nothing new or surprising. Employee pension benefit plan experts have recognized for years the soundness and prudence of putting large percentages of pension dollars into real estate investments. More than three years ago Equitable gave to the Trustees its prediction that new real estate investments by the Pension Fund would be considered by Equitable as early as mid-1980. As 1980 drew to a close contract changes to permit Equitable's appointment as investment manager for *new* real estate became a natural objective, to realize a renewal and modification of the 1977 contractual arrangements. Discussions toward those common objectives began in late 1980, and resulted in mutual agreement by Equitable, Palmieri and the Trustees in late spring and early summer 1981.

A memorandum by Equitable dated May 11 and June 5, 1981, sets forth the details and substance of the 1981 investment management renewal by the Trustees, by Equitable and by Palmieri. I understand that the Subcommittee Staff has already examined that memorandum. On May 21, 1981 the Equitable Board of Directors, acting on the recommendation of Equitable Executive Vice President Leo M. Walsh, Jr., adopted a Resolution in part as follows:

> "RESOLVED, That, subject to the obtaining of the aforementioned consent of the Secretary of Labor and of any required approval of the Superintendent of Insurance of the State of New York, approval is hereby given to the changes described in the Memorandum and authority is hereby given to enter into new agreements...with the Trustees of the Fund and with (Palmieri) substantially on the terms and conditions described in the Memorandum...."

The Pension Fund Board of Trustees followed Equitable's lead through a Resolution they adopted at a meeting on June 5, 1981, as did the Palmieri Board of Directors on July 13, 1981. Also, on June 17, 1981, a formal Memorandum of Agreement was executed by Equitable and by the Trustees. The Labor Department has been kept informed as these events unfolded, especially in light of the government role in these renewal contracts, the "Government assistance" as former Secretary Marshall called it in his appearance before your Subcommittee on July 18, 1977. For one thing, I am informed that the master agreement dated June 30, 1977 requires "written consent" by the Secretary of Labor relative to the change in the appointment of Equitable and Palmieri contemplated by the 1981 renewal contracts. For another, I am informed that Equitable and Palmieri require re-affirmation and enlargement, by the Secretary of Labor, of certain ERISA exemptions and advisory opinions issued at the time of mid-1977 agreements.

More than 5 months after the Equitable Board of Directors approved these 1981 renewal contracts, they remain up in the air. Informed by Equitable that the government's unexplained delay for several months in attending to requests for the necessary Labor Department clearance was blocking the Pension Fund from access to and participation in millions of dollars of valuable real estate investments, and that as a result of the delay the commencement date of the new Real Estate Acquisition Program would be no sooner than mid-December, 1981, and perhaps much later, the Trustees last week authorized their attorneys to seek an injunction that would end the Labor Department's indecision. I am hopeful that, with the impetus of a federal judge, the Labor Department will soon provide the approval that is needed to protect the participants and beneficiaries of the Pension Fund.

I now invite your attention to several features of the 1981 renewal contracts, which the Trustees signed on August 19, 1981.

Investment Policy Statement. The principal 1981 renewal contract incorporates a new Investment Policy Statement drafted by Equitable and approved by the Trustees after joint review and revision. The role of the Trustees in that approval and in any future change in this Investment Policy Statement is natural and appropriate for any employee pension plan Board of Trustees, especially in view of the exclusive responsibility of the Trustees for actuarial soundness and benefit design and distribution. Just as there is joint effort by the Pension Fund actuary, Daniel F. McGinn and his firm, and Equitable in actuarial and investment matters in which they share a need for unity and understanding, so there must be input of the Trustees and of Equitable in this 1981 restatement and in any future revision of the investment policy of the Pension Fund.

New Real Estate. There seems to be no question from any quarter (including the General Accounting Office) about the fact that Equitable has achieved superb investment performance on behalf of the Pension Fund. The new direction, the new Real Estate Acquisition Program, approved and commissioned by the Equitable Board of Directors on and since May 21, 1981, deserves prompt and unequivocal government support.

Transfers Between Equitable Real Estate and Securities Portfolios. This new feature, unique to and designed by Equitable, is the basis for the only new ERISA exemption sought by Equitable. Counsel for Equitable has explained to the Labor Department Equitable's need for this new ERISA exemption as follows (letter from Lawrence J. Haas dated August 18, 1981, page 24):

> "Under the New Agreements, Equitable will receive a smaller percentage fee for the securities assets it manages than for the real estate-related assets it manages. The difference in these fees reflects the differences in the costs and the degree of complexity in managing securities and real estate. However, because of this difference in fees, Equitable's exercise of discretionary authority to transfer funds between the securities and real estate accounts may raise questions under sections 406(a)(1)(C) and (D) and 406(b)(1) and (2) of ERISA.
>
> "An exemption for such transactions is, however, necessary for the prudent management of Fund assets. These transfers will permit Equitable to react quickly to current market conditions notwithstanding the fixed

asset allocation provisions of the New Agreements. Thus, the Fund can be protected from adverse developments in either the securities or real estate markets and will be able to take advantage of good investment opportunities in these markets as they arise. Insofar as the difference in fees presents a potential conflict of interest, it should be noted that the Trustees and Fund staff periodically review Equitable's investment activities and will regularly be reviewing any account transfers made by Equitable."

This inter-portfolio transfer capacity of Equitable, which is designed to enable Equitable "to react quickly to current market conditions" and thus to better serve the interests of the participants and beneficiaries of the Pension Fund, is not believed to be the source of any serious objection.

Real Estate Management Fees. The revised 1981 real estate management fee schedule, which is to becme effective upon commencement of the new Real Estate Acquisition Program, is attached to the renewal contracts of both Equitable and Palmieri. That revised fee schedule has been determined to be fair, reasonable, competitive and favorable to the Pension Fund.

Benefits and Administration Account. On July 15, 1981 the Trustees adopted a Resolution accepting a new formula proposed by IRS for internal management of the Benefits and Administration Account. That agreement between the Trustees and IRS is still in effect, a fact confirmed last week after related discussions by the Pension Fund with the Labor Department and IRS were discontinued, and is expected to be formalized in a new determination letter for the Fund from IRS in the near future. It is a matter of record beyond serious dispute that internal management of the Benefits and Administration Account has been superb. That performance is in part illustrated by the following annual investment rate-of-return performance comparisons:

	1978	1979	1980
Benefits and Administration Account	8.33%	11.08%	12.52%
Assets Managed By Investment Managers	7.49%	9.23%	14.33%
Total Investment Rate-of-Return	7.52%	9.31%	14.26%

Equitable Executive Vice President Leo M. Walsh, Jr. testified during a House Oversight Subcommittee hearing about the Pension Fund on March 24, 1980, that known facts about the Benefits and Administration Account revealed to him "a reasonable operating reserve for handling administrative transactions and for running the business of the fund other than the investment business... (Investing it 'in short-term instruments') would be reasonable business practice on this reserve." I am convinced that there is not the slightest disagreement between the Trustees and the government about future control and management of the Benefits and Administration Account.

Term of Renewal Contracts. Instead of the five-year minimum term established in the 1977 agreements with Equitable and Palmieri, the 1981 renewal contracts put the three parties on an equal footing, each able to sever its relationships upon prior notice of 180 days, a sound business practice for a sound employee pension plan and a practice that may even be dictated by ERISA in the actual circumstances that exist.

Apart from the 1981 renewal contracts, there are other elements of the proposal settlement. The Pension Fund, for instance, currently maintains a staff of internal auditors to monitor the administration and management of its affairs. A component of the proposed settlement is the Trustees' commitment, codified under a consent decree, to continue to maintain a qualified auditing staff to monitor the Fund. The Trustees' proposal is that the internal audit staff be directed by a certified public accountant. To retain objectivity, the audit staff will not participate in the administration and management of the Fund but will report directly to the Board of Trustees. Under the Trustees' proposal the internal audit staff shall be vested with the responsibility to review benefit administration, administrative expenditures and allocation of Pension Fund receipts to investments, benefits and administration. Further, the internal audit staff will be obliged to submit monthly reports setting forth data derived from their review and prepared in accordance with accounting principles established by the American Institute of Certified Public Accountants.

An additional component of settlement relates to the Fund's litigation defense costs policy. The settlement proposal provides that to the extent the Fund has paid or will pay attorneys' fees or other litigation defense costs, the Fund will continue to comply with all terms of the written policy statement entitled Litigation Defense Costs Policy. The policy statement has been submitted to the Secretary of Labor in conjunction with the settlement proposal and its terms are proposed to be incorporated in the consent decree.

Another current dispute between the Department of Labor and the Fund concerns the Fund's purchase and maintenance of an airplane for use in Fund business travel. The Trustees have taken a strong business-motivated position that the purchase and use of the plane constituted a sound investment which substantially enhanced the efficient operation of the Funds.

However, as a part of a comprehensive settlement to terminate the host of adversary proceedings at issue, the Trustees are prepared to accede to the Department's demands first to sell the airplane, which I might add is expected to yield a profit of more than one million dollars, and secondly, under the terms of the consent decree, to refrain from purchase of another aircraft without court approval and after notice to the Secretary of Labor.

In my introductory remarks I addressed the matter of Pension Fund-Labor Department cooperation and communication in the exercise of their respective responsibilities. The proposed consent decree formally incorporates the cooperation clause and provides that throughout the term of the decree, quarterly meetings will be held between representatives of the Fund and representatives of the Secretary to review compliance with the consent decree and other material circumstances, in accordance with review and reporting procedures to be mutually established. The proposed settlement includes the Fund's agreement to produce, on Department of Labor request, documents and information in its control as is consistent with the obligations and rights of the Fund and its participants and beneficiaries.

Senators, I believe that the Trustees' proposed commitment to a formal program of cooperation through quarterly meetings and voluntary reporting to the Department is a significant and innovative plan to defuse the expensive and time-consuming propensity by the Fund and the Department to take immediate adversary positions. Moreover, I believe that the proposed policy of cooperation may ultimately serve as a model for a program of cooperative effort between government agencies and employee benefit plans throughout the country.

I have already touched on the Trustees' commitment to use the best efforts of their offices to bring an end to the resource-draining litigation that has for years been pending between the Department and dissident union members as plaintiffs, and the Fund and certain former Trustees as defendants. The major litigation is the Department's case titled Marshal v. Fitzsimmons and the litigation titled

Dutchak v. International Brotherhood of Teamsters and Sullivan v. Fitzsimmons. These cases are pending in the United States District Court for the Northern District of Illinois before Judge James B. Moran.

On October 21, 1981, a memorandum of understanding signed by counsel for the private plaintiffs, counsel for the Fund and counsel for the International Brotherhood of Teamsters was presented to Judge Moran as a major step toward settlement of these related lawsuits. Although the Department of Labor is not yet a party to the memorandum of understanding, the comprehensive settlement proposal contemplates Department participation, and the memorandum of understanding between private plaintiffs and the Fund is dependent on Department participation in final settlement. The Trustees are hopeful of that result.

The components of the memorandum of understanding to settle the Dutchak and Sullivan litigation, and which ultimately depends upon Department participation, are several and significant.

The agreement provides that the Fund will establish a segregated pool of assets to fund payment of increased benefits under the terms of the settlement. The segregated asset pool will be invested in government or government-guaranteed obligations.

Under the memorandum of understanding, the Fund commits itself to retroactive application of the current vesting and break in service ERISA-qualified terms of the Pension Plan for the entire period of the plan's existence. The increased benefits that will become available to members as a result of the retroactive ERISA application will be funded by the segregated assets invested in government obligations.

To the extent that the pension benefits contemplated under this settlement are overdue, the Fund will pay beneficiaries interest at six percent, and past due benefits will be available to the heirs of a deceased participant.

The memorandum of understanding further contemplates creation of a hardship remedy to provide relief in the situation where a member has long years of service and contribution, yet a technicality not contemplated by the spirit of the rules requires denial of benefits. The hardships provision will permit the Trustees, in the exercise of discretion, to award pension benefits in that situation. The Trustees and the private plaintiffs have a shared enthusiasm for this rule which, for the first time, will permit the Trustees to take affirmative action to correct uncommon but seriously inequitable situations that inevitably arise when a single set of rules must apply to thousands of individual situations. The hardships category will permit the Trustees, under the strict dictates of prudency, to scrutinize substance over form in making final eligibility determinations.

Finally, the agreement in principal provides that the Fund will increase total and permanent disability benefits by ten percent.

Increased benefit payments resulting from these provisions are estimated to reach $140 million. Present Fund assets to be segregated and invested in government obligations for payment of these benefits as they become due have been actuarily calculated at $40 million.

At proceedings on October 21, 1981, Judge Moran stated concerns in common with the Trustees, on the issue of resource-draining continued litigation:

> As I think I have made it very clear all the way through, one of my concerns in this whole mass of cases has been the amount of money that can get chewed up in litigation with the actual potential recovery in relation to this total size of the Fund being very limited. (October 21, 1980, Tr. P.33)

Additional settlement of litigation contemplated under the comprehensive settlement agreement is the case of Donovan v. Nellis in the United States District Court for the Northern District of Florida. The Trustees' comprehensive proposal provides for dismissal of the Department's complaint against defendants and dismissal of the Trustees' third-party action against the former Secretary of Labor and other former officials of the Labor Department and Internal Revenue Service.

Finally, the dispute between the Department of Labor and the Health and Welfare Fund concerning the Fund's claims processing relationship with Amalgamated Insurance Agency will be resolved. I am here to tell you that the Trustees have decided to undertake in-house claims processing as opposed to having claims processed by an outside service provider.

The Fund and Amalgamated have agreed to the terms of a Memorandum of Understanding implementing the Trustees' decision to establish within the Fund a facility to process and directly administer its entire claims program. To expeditiously achieve a claims processing capability, the Trustees propose, and the Memorandum of Understanding contemplates, purchase of that much of the business, including such of the personnel as needed of Amalgamated as is necessary to accomplish these ends.

Specification of the purchase will be developed on behalf of the Fund by Arthur Young and Company in conjunction with Amalgamated's consultant to its counsel, Jenner & Block. Once the specifications of sale are established, the Trustees and Amalgamated agree that the fair and reasonable purchase price will be determined by independent experts. Specifically, the Memorandum of Understanding provides that the specifications will be submitted to two independent experts, one a Big 8 accounting firm and the other a management consulting firm of comparable national reputation, with the direction that each conduct an independent analysis to determine the value of assets to be sold. The agreement further provides that, in the event the experts' value analyses differ, the consultants will be directed to average the figures and report the averaged figure as the value of the transaction. The Fund and Amalgamated agree to be bound by the experts' valuation.

The Memorandum of Understanding between the Fund and Amalgamated will be submitted to the Secretary of Labor in support of the Fund's application for an exemption of the purchase from the prohibited transaction provision of ERISA.

What the Trustees have proposed to the Department of Labor and what I suggest to you today, Senators, is that it is time to reassess the value and efficiency of adversary proceedings and to consider the potential benefits of a program of reasonable and responsible cooperation. The Trustees and I suggest that it may be time to resolve the charges and counter-charges of the past and turn the attention of these Funds, their Trustees' and professional staff toward creation of new and innovative programs to maximize benefits and economic supports that can and should be made available to our participants and beneficiaries.

CENTRAL STATES
SOUTHEAST AND
SOUTHWEST AREAS
HEALTH AND WELFARE AND PENSION FUNDS

ADDITIONAL MATTERS

In addition to the materials previously provided to the Subcommittee, we also wish to supplement the record as follows.

1. Copies of documents recently received by the Pension Fund from the Internal Revenue Service determining the Fund's current tax-exempt status, approving the Fund's tax returns for the years 1976 and 1977, and explaining the actuarial caveat contained in the Service's determination letter are attached.

2. In his testimony before the Subcommittee on October 29, 1981, George W. Lehr stated that the Trustees are not compensated (see Transcript, Page 54). Mr. Lehr later learned that this testimony was incorrect. One of the Employer Trustees, Mr. Howard McDougall, who serves both Funds, is compensated at the rate of $100.00 per hour. This compensation is paid pursuant to Section 408(c)(2) of ERISA, since Mr. McDougall is not a full-time employee of the Michigan Cartagemen's Association. Copies of relevant correspondence from the Association and resolution of the Trustees are attached.

Internal Revenue Service **Department of the Treasury**

District
Director

230 S. Dearborn St. Chicago, Illinois 60604

November 11, 1981

Trustees of Central States,
Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr
Chicago, Illinois 60631

Case Number: 36928343
Name of Plan: Central States, Southeast and Southwest Areas Pension Fund
Application Form: 5303
Date Adopted: March 16, 1955
Date Amended: October 22, 1980
Employer Identification Number: 36-6514764
Plan Number: 001
File Number: 30026

Gentlemen:

Based on the information supplied in connection with your application, Form 5303, we have determined that the plan of Central States, Southeast and Southwest Areas Pension Fund, as amended through October 22, 1980, is qualified under Section 401, I.R.C., and the trust established under this plan is exempt under Section 501, I.R.C. This determination applies to plan years beginning after December 31, 1977. Please keep this letter in your permanent records.

Continued qualification of the plan will depend on its effect in operation under its present form. (See section 1.401-1(b)(3) of the Income Tax Regulations.) The status of the plan in operation will be reviewed periodically.

The enclosed Publication 794 describes some events that could occur after you receive this letter that would automatically nullify it without specific notice from us. The Publication also explains how operation of the plan may affect a favorable determination letter, and contains information about filing requirements.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other Federal or local statutes.

This determination is not an indication that the Internal Revenue Service is in any way passing on the actuarial soundness of the plan or on the reasonableness of the actuarial computations. It is not a determination that current contribution levels will result in the satisfaction of the minimum funding requirements of Internal Revenue Code section 412, nor is it a determination that contributing employers will not be subject to the Internal Revenue Code section 4971 excise tax for failure to meet the requirements of Internal Revenue Code section 412.

Trustees of Central States,
Southeast and Southwest
Areas Pension Fund

This determination letter is conditioned on:

1) The continued improvement of informational content and maintenance of the Data Base previously constructed, to enable you to:

   (a) Establish the eligibility of a participant to receive a pension or other form of benefit.

   (b) Comply with the mandatory benefits information reporting requirements of the Employee Retirement Income Security Act.

2) (a) The transfer of all assets received by the Fund to qualified independent asset managers, as defined in section 3(38) of ERISA, 29 U.S.C. section 1102(38), except as provided in paragraphs 2(b) through 2(d) below.

   (b) The Fund may retain assets which it has determined for a particular month are reasonably necessary for the payment of benefits and administrative expenses. The Fund's determination shall take into account sums that could be made available to the Fund by the independent asset managers and may include a reserve for benefits or administrative expenses which might become payable during the month. Assets retained for the payment of benefit and administrative expenses must be used exclusively for those purposes. The Fund's determination for each month shall be made during the last ten days of the preceeding month and shall include a report setting forth the reasons for the determinations, with supporting computations. Copies of the report shall be made available on request.

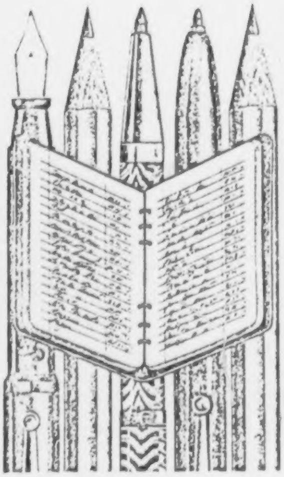
   (c) Notwithstanding the preceeding paragraph, for each month the average daily balance of all assets retained by the Fund, including assets held pending transfer to the independent asset managers, (determined as of the close of business each day) shall not exceed 2½ times the sum of the benefits paid in the preceeding month and the previous month's administrative expenses. In no event will the disbursements for administrative expenses for any month exceed 2½ times the administrative expenses in the previous month.

   (d) Funds held for benefit and administrative expenses shall be managed and invested in accordance with the advice of a qualified investment manager as defined in ERISA section 3(38).

Department of the Treasury
Internal Revenue Service

Publication 794
(Rev. March 1981)

Favorable Determination Letter



Introduction

This publication discusses some operational features that may affect the qualified status of an employee benefit plan. Plan reporting requirements are also highlighted.

Part I. Significance of a Favorable Determination Letter

An employer may use a favorable determination letter as a basis for deducting contributions to an employee benefit plan. The qualification of a plan is determined from the information in the written plan document and supporting information submitted by the employer. It shows that the plan conforms with the requirements of section 401(a) of the Internal Revenue Code. The actual operation of the plan determines its continued qualification.

A plan qualifies in operation if it is maintained according to the terms on which the favorable determination letter was issued. However, conditions can develop in operation that do not follow the written plan document, and they may jeopardize the plan's qualification. Examples of common operational features that adversely affect a favorable determination are:

Not meeting coverage requirements. If coverage is based on the percentage requirement of section 410(b)(1)(A) of the Code, and this requirement is not met after the favorable determination letter is issued, the letter will not apply.

If coverage is based on the requirement of section 410(b)(1)(B) of the Code and the number of employees in the lower and middle compensation ranges is substantially reduced in any year after the favorable determination letter is issued, the letter may not apply.

A plan is considered to meet these requirements for the whole plan year if it meets the requirements on at least one day of each quarter of that year.

Allocation of forfeitures. If employee turnover results in the allocation of forfeitures principally to officers, shareholders, and highly compensated employees, a favorable determination will not apply.

Amendments to the plan. A revenue ruling or a regulation can also adversely affect a favorable determination letter, but only for years after the ruling or regulation is published. All plans must be amended to comply with relevant rulings or regulations. Usually, the amendment must be effective by the first day of the first plan year beginning after the ruling or regulation is published.

Part II. Reporting Requirements

Most plan administrators or employers who maintain an employee benefit plan must file an annual return/report with the Internal Revenue Service. The following forms have been developed for this purpose.

Form 5500 is for a plan with 100 or more participants at the beginning of the plan year. Forms 5500-C and 5500-R are for a pension benefit plan with fewer than 100 participants at the beginning of the plan year, none of whom is an owner-employee, and for a welfare benefit plan with fewer than 100 participants at the beginning of the plan year. Forms 5500-K and 5500-R are for a Keogh plan with fewer than 100 participants at the beginning of the plan year and at least one owner-employee. Form 5500-G is for a government plan or a church plan not electing coverage under section 410(d) of the Code.

Forms 5500 and 5500-G must be filed annually. For plan years beginning after 1979, Forms 5500-C and 5500-K are to be filed for (i) the initial plan year, (ii) the year a final return/report would be filed, and (iii) at three-year intervals based on the sponsor's employer identification number. Form 5500-R must be filed in the years when Forms 5500-C and 5500-K are not filed. For more information, see Publication 1048, *Filing Requirements for Employee Benefit Plans*.

For plan years beginning in 1980, owner-employees who are the only participants in a defined contribution Keogh plan in that year and all earlier years are not required to file Form 5500-K or Form 5500-R. The term "owner-employee" includes a partner who owns more than a 10% interest in either the capital or profits of the partnership.

The Internal Revenue Service will process the returns and provide the Department of Labor and the Pension Benefit Guaranty Corporation the necessary information and copies of the returns on microfilm for disclosure purposes.

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216

To: Administrators of Employee Pension
and Welfare Benefit Plans

The Employee Retirement Income Security Act of 1974 (ERISA) requires administrators of employee pension benefit plans (pension, profit sharing and other plans that provide retirement income to employees or result in a deferral of income by employees for periods extending to the termination of covered employment or beyond), and employee welfare benefit plans (medical, surgical, hospital, sickness, accident, disability, death, unemployment, vacation, training, scholarship funds, prepaid legal services, etc.) to meet certain reporting and disclosure requirements. Within 120 days after a new plan comes into existence, plan administrators are to file a summary plan description (SPD) with the Secretary of Labor. A summary plan description also must be provided to each plan participant and beneficiary within 120 days after the establishment of a plan. Subsequently, a copy of the summary plan description must be furnished to each employee within 90 days after he or she becomes a participant in the plan and to each beneficiary within 90 days after he or she first receives benefits under the plan. However, certain fully insured welfare plans with fewer than 100 participants are exempt from the requirement to file a summary plan description with the Secretary.

For further information about the summary plan description and other reporting and disclosure requirements of ERISA, contact the nearest Area Office of the Labor Department's Labor-Management Services Administration (see list on reverse side).

Ian D. Lanoff
Administrator

Labor-Management Services Administration Area Offices

ATLANTA, Georgia 30309
1365 Peachtree St., N.E.
(404) 881-4090

BOSTON, Massachusetts 02108
110 Tremont St.
(617) 223-6736

BUFFALO, New York 14202
111 West Huron St.
(716) 846-4861

CHICAGO, Illinois 60604
175 W. Jackson Blvd.
(312) 353-7264

CLEVELAND, Ohio 44199
1240 East 9th St.
(216) 522-3855

DALLAS, Texas 75202
555 Griffin Square Bldg.
(214) 749-2886

DENVER, Colorado 80294
1961 Stout St.
(303) 837-5061

DETROIT, Michigan 48226
231 W. Lafayette St.
(313) 226-6200

HONOLULU, Hawaii 96850
300 Ala Moana
(808) 546-8984

KANSAS CITY, Missouri 64106
911 Walnut St.
(816) 374-5261

LOS ANGELES, California
300 N. Los Angeles St.
(213) 688-4975

MIAMI, Florida 33169
111 N.W. 183rd St.
(305) 350-4611

MINNEAPOLIS, Minnesota 55401
100 N. 6th Str.
(612) 725-2292

NASHVILLE, Tennessee 37203
1808 West End Bldg.
(615) 251-5906

NEWARK, New Jersey 07102
744 Broad St.
(201) 645-3712

NEW ORLEANS, Louisiana 70130
600 South St.
(504) 589-6173

NEW YORK, New York 10007
26 Federal Plaza
(212) 264-1980

PHILADELPHIA, Pennsylvania 19106
601 Market St.
(215) 597-4961

PITTSBURGH, Pennsylvania 15222
1000 Liberty Ave
(412) 644-2925

ST. LOUIS, Missouri 63101
210 N. 12th Blvd.
(314) 425-4691

SAN FRANCISCO, California 94105
211 Main St.
(415) 556-2030

HATO REY, Puerto Rico 00918
Carlos Chardon St.
(809) 753-4441

SEATTLE, Washington 98174
909 First Ave.
(206) 442-5216

WASHINGTON, D.C. 20036
1111 20th St., N.W.
(202) 254-6510

Internal Revenue S ice
Departmen. the Treasury

District
Director

RECEIVED
NOV 18 9 [illegible] '81

Person to Contact:
Telephone Number:
Refer Reply to:
Date: NOV 16 1981

Trustees of Central States,
Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr
Chicago, Illinois 60631

Gentlemen:

This letter is to explain the inclusion of the actuarial caveat in our determination letter dated November 11, 1981.

The statement "This determination is not an indication that the Internal Revenue Service is any way passing on the actuarial soundness of the plan or the reasonableness of the actuarial computations." is included on all determination letters covering defined benefit pension plans. This caveat is required by Section 7627.4 of the Internal Revenue Manual and by Revenue Procedure 80-30 Section 3.02. In other words, this is standard language that is routinely used not only in the case of the determination letter you received, but in determination letters issued to all defined benefit plans, large or small.

Very truly yours,

Donald E. Bergherm
District Director

11-18-81
copies sent to
[illegible]
[illegible]

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NOV 1 1981
EXEC. RECORDS

Internal Revenue Service **Department of the Treasury**

District Director

230 S. Dearborn St., Chicago, Illinois 60604

November 11, 1981

Name of Plan: Central States, Southeast and Southwest Areas Pension Fund

Trustees of Central States,
Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr
Chicago, Illinois 60631

Plan Number: 001
Date Amended: October 22, 1980
Year: 7612 and 7712
Form Number: 5500
Person to Contact: M. Pfahler
Contact Telephone: (312) 886-4711
File Folder NO.: 30026

Gentlemen:

We are pleased to tell you that we have accepted as filed the returns identified above. This decision was made after a review of the plan in operation and consideration given to your efforts to comply with the requirements of our determination letter issued April 26, 1977. During our examination certain plan deficiencies have been corrected by amendments.

We have granted relief under Section 7805(b) of the Internal Revenue Code for the above plan years. This means we will treat your plan and trust as qualified, as well as the deductibility of the contributions to the plan and to all participants, for the above plan years.

Please keep this letter in your permanent records.

If you have any questions about this matter, please contact the person whose name and telephone number are shown above.

Thank you for your cooperation.

Sincerely yours,

Donald E. Bergherm

Donald E. Bergherm
District Director

cc: Alan M. Levy, Esq.
James G. Walsh, Esq.
William J. Nellis, Esq.
Russell N. Luplow, Esq.

MEMBER
LOCAL & SHORT HAUL CARRIERS NATIONAL CONFERENCE
A. T. A.

Michigan Cartagemen's Association
27301 WEST FIVE MILE ROAD
DETROIT, MICHIGAN 48239
Phone: (313) 533-5100

H. McDOUGALL .... Manager

March 14, 1980

Mr. Howard McDougall, Director
Michigan Cartagemen's Association
27301 West Five Mile Road
Detroit, Michigan 48239

Dear Howard:

Pursuant to our discussions and meetings with the Financial Committee, please be advised that effective April 1, 1980 your status as a full time employee of the Michigan Cartagemen's Association will be changed to one of a part-time employee.

Further, it is agreed that because of this new employee status your salary, effective April 1, 1980 will be reduced by forty five (45%) percent.

Thank you for your cooperation in this matter.

Sincerely,

MICHIGAN CARTAGEMEN'S ASSOC.

Michael D. Conner, President

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MDC/ds

ITEM NO. 41

TRUST AMENDMENT: TRUSTEE COMPENSATION

At the meetings of the Trustees on March 18-19, 1980, there were distributed and reviewed two Resolutions pertaining to compensation payable to the Trustees for services performed on behalf of the Fund (attached "EXHIBIT A" and "EXHIBIT B").

* *

ACTION OF THE FULL BOARD OF TRUSTEES MEETING - MARCH 18-19, 1980

After a full discussion, a motion was made, seconded and unanimously carried to adopt the two distributed Resolutions (attached "EXHIBIT A" and "EXHIBIT B"), effective immediately.

RESOLUTION

WHEREAS, it has been determined to be in the best interest of the Fund to amend its trust agreement in the following manner;

IT IS HEREBY RESOLVED BY THE TRUSTEES, IN LAWFUL MEETING ASSEMBLED, AS FOLLOWS:

1. Section 15 of Article IV of the trust agreement of the Fund, as amended to date, is further amended to read as follows:

> "Sec. 15. The Trustees shall be entitled to receive reasonable compensation for services rendered, and the reimbursement of expenses properly and actually incurred, in the performance of their duties to the Fund; except that no Trustee who already receives full-time pay from an Employer or an association of Employers or from the Union shall receive compensation from the Fund, except for reimbursement of expenses properly and actually incurred."

2. This Resolution is effective immediately.

EXHIBIT A

RESOLUTION

WHEREAS, it has been determined to be in the best interest of the Fund to adopt the following Resolution;

IT IS HEREBY RESOLVED BY THE TRUSTEES, IN LAWFUL MEETING ASSEMBLED, AS FOLLOWS:

1. In exchange for services rendered in the performance of their duties to the Fund, the Trustees shall be entitled to receive compensation at the rate of $100 per hour of such service. This right to compensation shall be limited to Trustees eligible for compensation in accordance with Section 15 of Article IV of the trust agreement of the Fund, as amended to date.

2. Any request for compensation pursuant to this Resolution shall be submitted in writing, with appropriate detail, to the Executive Director or Assistant Executive Director of the Fund, for review and processing as an administrative expense of the Fund.

3. This Resolution is effective immediately.

EXHIBIT B

MINUTES OF THE HEALTH AND WELFARE BOARD MEETING
MARCH 18-19, 1980

ITEM NO. 38

TRUST AMENDMENT: TRUSTEE COMPENSATION

At the meetings of the Trustees on March 18-19, 1980, there were distributed and reviewed two Resolutions pertaining to compensation payable to the Trustees for services performed on behalf of the Fund (attached "EXHIBIT A" and "EXHIBIT B").

* *

ACTION OF THE HEALTH AND WELFARE BOARD MEETING - MARCH 18-19, 1980

After a full discussion, a motion was made, seconded and unanimously carried to adopt the two distributed Resolutions (attached "EXHIBIT A" and "EXHIBIT B"), effective immediately.

RESOLUTION

WHEREAS, it has been determined to be in the best interest of the Fund to amend its trust agreement in the following manner;

IT IS HEREBY RESOLVED BY THE TRUSTEES, IN LAWFUL MEETING ASSEMBLED, AS FOLLOWS:

1. Section 15 of Article IV of the trust agreement of the Fund, as amended to date, is further amended to read as follows:

> "Sec. 15. The Trustees shall be entitled to receive reasonable compensation for services rendered, and the reimbursement of expenses properly and actually incurred, in the performance of their duties to the Fund; except that no Trustee who already receives full-time pay from an Employer or an association of Employers or from the Union shall receive compensation from the Fund, except for reimbursement of expenses properly and actually incurred."

2. This Resolution is effective immediately.

EXHIBIT A

RESOLUTION

WHEREAS, it has been determined to be in the best interest of the Fund to adopt the following Resolution;

IT IS HEREBY RESOLVED BY THE TRUSTEES, IN LAWFUL MEETING ASSEMBLED, AS FOLLOWS:

1. In exchange for services rendered in the performance of their duties to the Fund, the Trustees shall be entitled to receive compensation at the rate of $100 per hour of such service. This right to compensation shall be limited to Trustees eligible for compensation in accordance with Section 15 of Article IV of the trust agreement of the Fund, as amended to date.

2. Any request for compensation pursuant to this Resolution shall be submitted in writing, with appropriate detail, to the Executive Director or Assistant Executive Director of the Fund, for review and processing as an administrative expense of the Fund.

3. This Resolution is effective immediately.

EXHIBIT B

PREPARED STATEMENT OF IRA COHEN, DIRECTOR, ACTUARIAL DIVISION, INTERNAL REVENUE SERVICE

AS MR. WINBORNE JUST MENTIONED, THE RESPONSIBILITY FOR DETERMINING THAT THE MINIMUM FUNDING STANDARDS ARE MET IS WITHIN OUR JURISDICTION. HOWEVER, THE SERVICE HAS NO AUTHORITY FOR DETERMINING WHETHER A PLAN IS ACTUARIALLY SOUND.

THE MINIMUM FUNDING STANDARDS REQUIRE AN EMPLOYER TO MAKE CONTRIBUTIONS TO A PLAN THAT ARE DETERMINED UNDER A FUNDING METHOD SELECTED BY THE EMPLOYER. THE CONTRIBUTIONS ARE REQUIRED TO BE SUFFICIENT TO PAY THE NORMAL COSTS OF THE PLAN DETERMINED UNDER THE FUNDING METHOD AND TO PAY FOR AN AMORTIZED PORTION OF THE PLAN'S PAST SERVICE COSTS, WHICH RESULT FROM RETROACTIVE BENEFIT INCREASES, SUCH AS BENEFITS PROVIDED UNDER A PLAN FOR AN EMPLOYEE'S SERVICE PRIOR TO THE ADOPTION OF THE PLAN. IF CONTRIBUTIONS TO THE PLAN ARE NOT SUFFICIENT TO COVER THESE COSTS, THE PLAN MAY HAVE AN ACCUMULATED FUNDING DEFICIENCY, AND THE EMPLOYER WILL BE SUBJECT TO AN EXCISE TAX.

ON READING THE ERISA FUNDING REQUIREMENTS, IT IS POSSIBLE TO GET THE IMPRESSION THAT THE FACTORS USED IN DETERMINING THE CONTRIBUTIONS UNDER A PLAN'S FUNDING METHOD (AND THUS IN DETERMINING WHETHER THE PLAN SATISFIES THE ERISA FUNDING REQUIREMENTS) ARE QUITE OBJECTIVE. THE STANDARDS CALL FOR PRECISE CHARGES AND CREDITS TO A FUNDING STANDARD ACCOUNT, WITH SPECIFIC AMORTIZATION PERIODS FOR SEVERAL OF THESE CHARGES DETERMINATION OF THE COSTS REQUIRED UNDER THE MINIMUM FUNDING STANDARD IS QUITE SUBJECTIVE.

AN ACTUARIAL VALUATION DETERMINES THE LEVEL OF SYSTEMATIC CONTRIBUTIONS NECESSARY TO PROVIDE THE BENEFITS UNDER THE PLAN. ACTUARIAL ASSUMPTIONS ARE USED TO ESTIMATE THE TOTAL AMOUNT OF ASSETS THAT WILL BE NECESSARY TO PAY ALL BENEFITS UNDER THE PLAN. FOR EXAMPLE, AN ASSUMPTION IS MADE ABOUT MORTALITY, THAT IS THE LIKELIHOOD THAT A PARTICIPANT WILL DIE.

FOR A RETIREE IN PAY STATUS, THE MONTHLY BENEFITS HAVE ALREADY BEEN DETERMINED. HOWEVER, EACH FUTURE PAYMENT MAY BE CONDITIONED ON THE PARTICIPANT'S SURVIVING TO THE DUE DATE OF THE PAYMENT. THE PRESENT VALUE OF ANY SUCH PAYMENT MUST BE DISCOUNTED BY THE PROBABILITY OF DEATH BEFORE SUCH PAYMENT IS DUE. THE VALUE OF BENEFITS PAYABLE IN THE FUTURE IS ALSO DISCOUNTED FOR INTEREST, SINCE WE ARE ASSSIGNING A CURRENT VALUE TO A FUTURE LIABILITY. FOR AN EMPLOYEE WHO IS CURRENTLY WORKING, THE BENEFIT MAY VARY WITH THE AMOUNT OF FUTURE SERVICE. IN ADDITION, PLANS OFTEN PROVIDE THAT BENEFITS ARE FORFEITED WHEN AN EMPLOYEE SEPARATES FROM SERVICE PRIOR TO A STATED NUMBER OF YEARS OF SERVICE. SUCH FORFEITABLE BENEFITS ARE CALLED NONVESTED BENEFITS. THUS, THE LEVEL OF CONTRIBUTIONS TO THE PLAN IS ALSO AFFECTED BY AN ASSUMPTION ABOUT FUTURE EMPLOYEE TURNOVER. IF A PLAN PROVIDES SUBSIDIZED EARLY RETIREMENT BENEFITS (THAT IS, BENEFITS IN EXCESS OF THE ACTUARIAL EQUIVALENT OF THE PORTION OF THE NORMAL RETIREMENT BENEFIT ACCRUED AT THE DATE OF EARLY RETIREMENT), THE COST WILL VARY WITH ASSUMPTIONS ABOUT THE AGE OF RETIRING EMPLOYEES.

AN ERROR IN THE ACTUARIAL ASSUMPTIONS USED BY A PLAN CAN HAVE A SUBSTANTIAL EFFECT ON THE PLAN'S COSTS. THE SELECTION OF A MORTALITY ASSUMPTION IS GENERALLY NOT TOO SIGNIFICANT. HOWEVER, THE COSTS MAY VARY SIGNIFICANTLY WITH THE CHOICE OF INTEREST RATE. AN ACTUARIAL RULE OF THUMB (WHICH IS INACCURATE IN SOME CASES) IS THAT THE COSTS DECREASE APPROXIMATELY 6 PERCENT FOR AN INCREASE IN THE INTEREST ASSUMPTION OF 1/4 OF 1 PERCENT. THE RULE OF THUMB TENDS TO BREAK DOWN WITH LARGE INTEREST DIFFERENTIALS. AS ONE CAN SEE, HOWEVER, THE BOTTOM LINE COSTS VARY SIGNIFICANTLY WITH ACTUARIAL ASSUMPTIONS. ONE IMPORTANT QUESTION IS HOW THE LAW PERMITS THE SERVICE TO DEAL WITH ACTUARIAL ASSUMPTIONS.

THE INTERNAL REVENUE CODE STATES THAT ALL PENSION COSTS MUST BE DETERMINED ON THE BASIS OF ACTUARIAL ASSUMPTIONS AND METHODS THAT ARE REASONABLE IN THE AGGREGATE (TAKING INTO ACCOUNT THE EXPERIENCE OF THE PLAN AND REASONABLE EXPECTATIONS) AND WHICH, IN COMBINATION, OFFER THE ACTUARY'S BEST ESTIMATE OF ANTICIPATED EXPERIENCE UNDER THE PLAN. THE HOUSE COMMITTEE REPORT CONCERNING ERISA INDICATES THAT THE SERVICE CAN RETROACTIVELY CHANGE THE ACTUARIAL ASSUMPTIONS WHEN IT AUDITS A PLAN ONLY WHERE THE ASSUMPTIONS ARE SUBSTANTIALLY UNREASONABLE. THIS POSITION IS NOT INCONSISTENT WITH THE SERVICE'S PRE-ERISA POSITION CONCERNING DEDUCTIONS FOR PENSION CONTRIBUTIONS. UNDER THAT POSITION, THE ACTUARIAL ASSUMPTIONS WILL GENERALLY BE CONSIDERED REASONABLE UNLESS THERE IS A CONSISTENT PATTERN OF GAINS FROM SOURCES THAT ARE LIKELY TO RECUR. A "GAIN" MEANS THAT THE COSTS ACTUALLY EXPERIENCED BY THE PLAN ARE LESS

THAN THE COSTS THAT WERE ESTIMATED. THE WORDS "CONSISTENT," "SUBSTANTIAL," AND "LIKELY TO RECUR" ARE SIMILAR TO THE REQUIREMENTS IN THE LEGISLATIVE HISTORY OF ERISA. THEREFORE, OUR ABILITY TO CHALLENGE A PLAN'S ACTUARIAL ASSUMPTIONS IS LIMITED TO SITUATIONS WHERE THE ASSUMPTIONS ARE SUBSTANTIALLY UNREASONABLE.

PERHAPS THE MOST SENSITIVE ACTUARIAL ASSUMPTION IN THE CASE OF ANY PLAN IS THE INTEREST RATE. THE INTEREST RATE REFLECTS THE LIKELY RETURN ON ALL ASSETS (INCLUDING FUTURE CONTRIBUTIONS) OVER A LONG PERIOD OF YEARS. IT IS VERY DIFFICULT FOR THE SERVICE TO CHALLENGE AN INTEREST RATE ASSUMPTION WHEN THE DIFFERENTIAL IS ONLY 1/2 OF 1 PERCENT, YET THAT DIFFERENTIAL SIGNIFICANTLY IMPACTS ON COSTS. THE HOUSE COMMITTEE REPORT CLEARLY RECOGNIZED THAT THERE IS A RANGE OF ACTUARIAL ASSUMPTIONS THAT MAY BE REASONABLE AND INDICATES THAT THE CHOICE OF THE ASSUMPTION SHOULD BE LEFT TO THE ACTUARY.

A SECOND ITEM IN THE ACTUARIAL VALUATION SIGNIFICANTLY IMPACTING ON THE MINIMUM FUNDING REQUIREMENTS IS THE CHOICE OF FUNDING METHODS. FUNDING METHODS ARE A DEVICE TO DETERMINE HOW PLAN CONTRIBUTIONS NEEDED TO PAY THE VALUE OF BENEFITS DETERMINED UNDER AN ACTUARIAL VALUATION WILL BE SPREAD OVER A PERIOD OF MANY YEARS. STATED DIFFERENTLY, FUNDING METHODS ARE A DEVICE USED TO ALLOCATE FUTURE COSTS TO FUTURE YEARS. UNDER SOME FUNDING METHODS, THE COSTS FOR A PARTICULAR YEAR COULD BE MORE THAN TWICE AS GREAT (USING THE SAME ACTUARIAL ASSUMPTIONS) AS THE COSTS UNDER OTHER FUNDING METHODS. ERISA DESCRIBES SIX ACCEPTABLE FUNDING METHODS AND ALSO PERMITS OTHER METHODS FOUND ACCEPTABLE BY THE SERVICE.

THERE IS A FURTHER PROVISION IN THE LAW THAT ALLOWS THE SPONSOR OF A PLAN GREAT FLEXIBILITY IN SATISFYING THE MINIMUM FUNDING REQUIREMENTS. THE CODE PROVIDES THAT CONTRIBUTIONS MADE AFTER THE END OF THE YEAR MAY RELATE BACK TO THAT YEAR IN TERMS OF SATISFYING THE PLAN'S LIABILITY UNDER THE FUNDING STANDARDS. UNDER TEMPORARY REGULATIONS ISSUED BY THE TREASURY DEPARTMENT, SUCH RETROACTIVE CONTRIBUTIONS CAN BE MADE UP TO 8 1/2 MONTHS AFTER THE END OF THE YEAR.

TO SUM UP, THE DETERMINATION OF WHETHER THE PLAN SATISFIES THE MINIMUM FUNDING STANDARDS IS QUITE SUBJECTIVE. FURTHER, THE TAXPAYER HAS CONSIDERABLE FLEXIBILITY IN THE CHOICE OF FUNDING METHODS AND ACTUARIAL ASSUMPTIONS WHICH COULD HAVE A SIGNIFICANT IMPACT ON THE DETERMINATION OF THE AMOUNTS NECESSARY TO SATISFY THE MINIMUM FUNDING STANDARDS.

THE SERVICE CAN NOT CHALLENGE THE CHOICE OF METHOD IF IT IS PERMITTED UNDER ERISA. IN ADDITION, THE SERVICE CAN NOT CHALLENGE THE ACTUARIAL ASSUMPTIONS USED BY A PLAN UNLESS THEY ARE SUBSTANTIALLY UNREASONABLE. THE SERVICE CAN ASSESS AN EXCISE TAX IF A PLAN HAS AN ACCUMULATED FUNDING DEFICIENCY. THIS CAN OCCUR IF A PLAN USES AN UNACCEPTABLE FUNDING METHOD, OR IF AN ACCUMULATED DEFICIENCY OCCURS FOR SOME OTHER REASON, SUCH AS A FAILURE OF THE PLAN SPONSOR TO MAINTAIN AN ADEQUATE LEVEL OF CONTRIBUTIONS. I WANT TO ASSURE YOU THAT THE SERVICE WILL MONITOR THE CENTRAL STATES FUND TO INSURE COMPLIANCE WITH THE MINIMUM FUNDING STANDARDS.

THE NEXT ISSUE INVOLVES THE CONCEPT OF ACTUARIAL SOUNDNESS. THERE IS NO UNIVERSALLY ACCEPTED DEFINITION OF ACTUARIAL SOUNDNESS, EVEN WITHIN THE ACTUARIAL COMMUNITY. FOR DISCUSSION PURPOSES, HOWEVER, THE TERM COULD BE DEFINED AS A LEVEL OF ASSETS SUFFICIENT TO PROVIDE BENEFITS THAT WILL BECOME DUE WITHIN A SPECIFIED NUMBER OF YEARS, AFTER ALLOWANCE OF FUTURE INTEREST ASSUMED TO BE EARNED BY THE FUND AND FUTURE CONTRIBUTIONS ASSUMED TO BE MADE TO THE FUND. THUS, UNDER THIS DEFINITION ACTUARIAL SOUNDNESS WOULD MERELY BE A PROJECTED CASH FLOW TEST OVER SOME INTERVAL OF TIME.

NOTHING IN THE LAW ADMINISTERED BY THE INTERNAL REVENUE SERVICE DEALS DIRECTLY WITH ACTUARIAL SOUNDNESS. THE QUALIFICATION REQUIREMENTS OF THE CODE DO NOT DEAL DIRECTLY OR INDIRECTLY WITH THE CONCEPT OF ACTUARIAL SOUNDNESS. ALTHOUGH THE MINIMUM FUNDING REQUIREMENTS REQUIRE A BASIC LEVEL OF CONTRIBUTIONS TO A PENSION PLAN, THESE REQUIREMENTS DO NOT GUARANTEE ACTUARIAL SOUNDNESS.

THE MINIMUM FUNDING STANDARD FOR DEFINED BENEFIT MULTIEMPLOYER PLANS REQUIRES THAT CONTRIBUTIONS BE MADE WITH RESPECT TO EACH PLAN YEAR THAT IS SUBJECT TO THE MINIMUM FUNDING REQUIREMENTS IN AMOUNTS NOT LESS THAN THE NORMAL COST OF THE PLAN PLUS A 40-YEAR AMORTIZATION OF THE PAST SERVICE LIABILITY.

A PLAN THAT ALWAYS SATISFIES THE MINIMUM FUNDING STANDARDS MAY, NONETHELESS, BE UNABLE TO PROVIDE BENEFITS WHEN THEY BECOME DUE FOR A RATHER LIMITED PERIOD OF TIME. CONSIDER, FOR EXAMPLE, A PLAN WHOSE ASSETS ARE SUBSTANTIALLY SMALLER THAN THE PRESENT VALUE OF RETIREMENT

BENEFITS. THE COST TO PROVIDE ALL RETIREMENT BENEFITS IS AMORTIZED OVER 40 YEARS. HOWEVER, ALL THE BENEFITS ARE PAID OUT TO THE RETIREES OVER THE REMAINING PERIOD OF THEIR LIVES, AND THEIR LIFE EXPECTANCY MAY BE ONLY 15 YEARS. FURTHER, ASSUME THAT THE ACTIVE POPULATION IS SMALL RELATIVE TO THE RETIRED POPULATION. IN SUCH A CASE, BENEFITS THAT ARE CURRENTLY PAYABLE UNDER THE PLAN MAY WELL EXCEED THE MINIMUM FUNDING REQUIREMENTS FOR EVERYONE.

IN ORDER TO STRENGTHEN THE FUNDING OF MULTIEMPLOYER PLANS AND MOVE MORE IN THE DIRECTION OF ACTUARIAL SOUNDNESS, CONGRESS PASSED THE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT (MPPAA). CONGRESS REDUCED THE AMORTIZATION PERIOD FOR PAST SERVICE COSTS RESULTING FROM PLAN AMENDMENTS ADOPTED AFTER THE DATE OF ENACTMENT FROM 40 YEARS TO 30 YEARS. MORE SIGNIFICANTLY, NEW FUNDING REQUIREMENTS WERE IMPOSED ON PLANS IN REORGANIZATION. REORGANIZATION IS DESIGNED AS AN INDICATOR OF A PLAN MORE LIKELY TO ENCOUNTER FINANCIAL DIFFICULTIES. WHEN A PLAN IS IN REORGANIZATION, A NEW FUNDING RULE APPLIES. THE REORGANIZATION REQUIREMENTS ARE NOT EFFECTIVE FOR MOST MULTIEMPLOYER PLANS UNTIL 1984.

GENERALLY, A PLAN WILL NOT BE IN REORGANIZATION UNLESS THE PRESENT VALUE OF BENEFITS IN PAY STATUS SIGNIFICANTLY EXCEEDS THE PLAN ASSETS. THUS, A PLAN WHICH DOES NOT HAVE ENOUGH ASSETS TO PAY BENEFITS TO BOTH CURRENT RETIREES AND THE NONFORFEITABLE BENEFITS OF EMPLOYEES WHO HAVE NOT RETIRED WILL BE IN REORGANIZATION STATUS. IT IS EVEN POSSIBLE, BUT HIGHLY UNUSUAL, FOR A PLAN WITH RESPECT TO WHICH ALL THE ACTUARIAL ASSUMPTIONS ARE REALIZED, TO BECOME INSOLVENT WITHOUT EVEN TRIGGERING THE REORGANIZATION REQUIREMENTS.

THE SPECIAL FUNDING RULE APPLICABLE TO PLANS IN REORGANIZATION REQUIRES MORE RAPID FUNDING OF BENEFITS THAT ARE ALREADY VESTED. HOWEVER, MPPAA RECOGNIZES THAT THE SPECIAL FUNDING RULE MAY NOT BE SUFFICIENT TO MAKE A PLAN ACTUARIALLY SOUND. A FURTHER PROVISION REQUIRES ADDITIONAL CONTRIBUTIONS IF THE PLAN'S ASSETS AND INVESTMENT INCOME ARE NOT SUFFICIENT TO PROVIDE THE BENEFITS DUE THAT YEAR.

OTHER PROVISIONS OF MPPAA MAY RESULT IN A REDUCED FUNDING STANDARD. SPECIAL RELIEF IS GRANTED IN THE CASE OF CERTAIN OVERBURDENED PLANS. IN ADDITION, THE FUNDING REQUIREMENTS ARE ALSO REDUCED WHEN A PLAN EXPERIENCES AN UNEXPECTED DECLINE IN THE BASE UNITS USED IN DETERMINING

THE LEVEL OF CONTRIBUTIONS TO THE PLAN. FOR EXAMPLE, IN A PARTICULAR PLAN, BASE UNITS MIGHT BE STATED IN TERMS OF HOURS WORKED. THESE LIMITING PROVISIONS REDUCE THE FUNDING OF A PLAN BUT TEND TO PREVENT THE TERMINATION OF THE PLAN AND THUS SERVE AN IMPORTANT SOCIAL POLICY THAT CONFLICTS WITH ACTUARIAL SOUNDNESS.

AT THIS POINT SEVERAL QUESTIONS MAY COME TO MIND. IF THE MINIMUM FUNDING STANDARDS DO NOT INSURE ACTUARIAL SOUNDNESS, WHY WERE THEY ENACTED? WHY WASN'T AN ACTUARIAL SOUNDNESS TEST ENACTED? ISN'T ACTUARIAL SOUNDNESS A MORE SOCIALLY DESIRABLE GOAL?

CLEARLY, ACTUARIAL SOUNDNESS IS AN IMPORTANT GOAL. HISTORICALLY, RETIREES HAVE LOST BENEFITS BECAUSE THE ACCUMULATION OF ASSETS IN PENSION PLANS HAVE BEEN INSUFFICIENT TO PROVIDE BENEFITS, NOT BECAUSE OF A FAILURE OF PENSION PLANS TO SATISFY A MINIMUM FUNDING STANDARD. BEFORE ANALYZING THE INTRICACIES OF AN ACTUARIAL SOUNDNESS STANDARD, IT SHOULD BE RECOGNIZED THAT THERE ARE DIFFERENT AND COMPETING SOCIAL POLICIES UNDERLYING THE IMPOSITION OF ANY FUNDING STANDARDS IN THIS AREA.

FROM A CAUTIOUS POINT OF VIEW, ONE MIGHT ARGUE THAT THE ASSETS SHOULD ALWAYS BE MAINTAINED AT A LEVEL ADEQUATE TO PROVIDE ALL VESTED BENEFITS. IN OTHER WORDS, THE ASSETS SHOULD BE AT LEAST EQUAL TO THE PRESENT VALUE OF VESTED BENEFITS ACCRUED TO DATE. IMPOSITION OF SUCH A STANDARD WOULD GREATLY REDUCE THE POSSIBILITY OF FUTURE BENEFIT LOSS.

IMPOSITION OF SUCH A STANDARD, HOWEVER, WOULD HAVE OTHER DRASTIC SOCIAL CONSEQUENCES. AS A PERSON BECOMES OLDER, THE COST OF PROVIDING BENEFITS TO THAT PERSON INCREASES. THE INCREASE BECOMES VERY DRAMATIC AS THE PERSON APPROACHES RETIREMENT. CONSIDER A MEDIUM SIZED OR LARGE COMPANY WITH A SIGNIFICANT NUMBER OF EMPLOYEES AT ALL AGES. ONE COULD ESTABLISH A PLAN WHICH EITHER PROVIDES OR DOES NOT PROVIDE FOR BENEFITS ATTRIBUTABLE TO SERVICE PRIOR TO THE ADOPTION OF THE PLAN, WHICH ARE CALLED PAST SERVICE BENEFITS. CONSIDER A BENEFIT FORMULA OF 1 PERCENT OF COMPENSATION PER YEAR OF SERVICE AND AN EMPLOYEE HIRED AT AGE 30 IS 60 YEARS OF AGE WHEN THE PLAN IS ESTABLISHED AND IS EARNING $20,000 PER YEAR. THE EMPLOYEES NORMAL RETIREMENT AGE IS 65. IF THE PLAN DOES NOT PROVIDE PAST SERVICE BENEFITS, THE PLAN WILL PROVIDE THAT INDIVIDUAL WITH A MONTHLY PENSION EQUAL TO $83.33 (1 PERCENT x 5 YEARS x $20,000 x 1/12) OR 5 PERCENT OF THAT INDIVIDUAL'S MONTHLY PAY. SUCH A PENSION IS

INADEQUATE. IF THE INDIVIDUAL WERE AGE 64, THE MONTHLY PENSION OF $16.67 WOULD BE AN INSULT. IT WOULD TAKE MANY YEARS BEFORE THE PLAN WOULD PROVIDE MEANINGFUL BENEFITS TO ANYONE, AND THE SENIOR EMPLOYEES WHO ARE THOSE MOST IN NEED AND MOST CONCERNED ABOUT A PENSION AT THE TIME WHEN THE PENSION WAS ESTABLISHED, WOULD GET THE LEAST. AN ALTERNATIVE WOULD BE TO PROVIDE A BENEFIT FOR PAST SERVICE. THE INDIVIDUAL WHO WAS 60 YEARS OF AGE WHEN THE PLAN WAS ESTABLISHED WOULD GET A PENSION UPON WORKING TO AGE 65 OF $583.33 (1 PERCENT x 35 YEARS x $20,000 x 1/12) or 35 PERCENT OF PAY. AS OF THE DATE OF ESTABLISHMENT OF THE PLAN THAT INDIVIDUAL'S VESTED ACCRUED BENEFIT WOULD BE $500 PER MONTH (1 PERCENT x 30 YEARS x $20,000 x 1/12). IF THE FUNDING STANDARDS WERE DESIGNED TO FUND THE BENEFITS ACCRUED FOR THAT INDIVIDUAL, THE EMPLOYER WOULD HAVE TO CONTRIBUTE APPROXIMATELY $43,000 FOR THAT ONE INDIVIDUAL. CLEARLY THIS COST (MORE THAN TWICE THE INDIVIDUAL'S SALARY) WOULD BE PROHIBITIVE. SUCH A STANDARD WOULD, THEREFORE, ELIMINATE PAST SERVICE BENEFITS. THE ANSWER TO THIS PROBLEM IS TO PERMIT PAST SERVICE BENEFITS BUT TO REQUIRE FUNDING OVER A LONGER PERIOD OF TIME. HOWEVER, IT SHOULD BE RECOGNIZED THAT THIS ANSWER RESULTS IN PLAN ASSETS INITIALLY BEING INADEQUATE TO PROVIDE ALL VESTED BENEFITS.

THERE ARE MANY REASONS WHY A PENSION PLAN MAY BE UNABLE TO PROVIDE BENEFITS WHEN THEY BECOME DUE. THE PLAN COULD SUFFER A SEVERE INVESTMENT LOSS, ACTUAL PLAN EXPERIENCE MAY BE SIGNIFICANTLY WORSE THAN ASSUMED, OR THE PLAN MAY SUFFER A DECLINE IN THE CONTRIBUTION BASE. IN THE AREA OF LARGE MULTIEMPLOYER PLANS, THE LATTER PROBLEMS MAY BE MOST SIGNIFICANT.

BECAUSE PAST SERVICE BENEFITS AND RETROACTIVE BENEFIT INCREASES ARE NOT IMMEDIATELY FUNDED, THE COST OF FUNDING THOSE BENEFITS IS MET IN THE FUTURE. IF THE WORKFORCE IS STABLE, ALL COSTS PER HOUR WORKED OR AS A PERCENTAGE OF PAYROLL MAY BE FAIRLY CONSTANT. IF, HOWEVER, THERE IS A DECLINE IN THE INDUSTRY, THESE COSTS INCREASE PER HOUR WORKED OR AS A PERCENTAGE OF THE REMAINING PAYROLL. IN ADDITION, BECAUSE THE AVERAGE AGE OF THE REMAINING ACTIVES MAY INCREASE SHARPLY BECAUSE OF SENIORITY RULES, THE COST OF FUNDING THE PLAN TO THE REMAINING EMPLOYERS MAY BE GREATLY INCREASED. NEW EMPLOYERS (THE VERY LIFEBLOOD OF THE PLAN) OFTEN

REFUSE TO JOIN THE PLAN BECAUSE THE SAME BENEFITS COULD BE PROVIDED MORE CHEAPLY UNDER A NEW PLAN THAT WOULD NOT INHERIT THE LIABILITIES OF THE OLD PLAN. YOUNGER EMPLOYEES BECOME DISCONTENT BECAUSE OTHER SALARY INCREASES ARE DIVERTED TO FUND BENEFITS OF SENIOR OR RETIRED EMPLOYEES. SUCH YOUNGER EMPLOYEES MAY QUESTION WHETHER THEY WILL EVER GET A BENEFIT. EVEN IF YOUNGER EMPLOYERS DO ULTIMATELY RECEIVE A BENEFIT, THEY MAY RECEIVE GREATER BENEFITS BY CONTRIBUTING TO AN INDIVIDUAL RETIREMENT ACCOUNT BECAUSE INCREASES IN BENEFITS WERE UNLIKELY IN A FINANCIALLY TROUBLED PLAN. CONSIDERING THE ECONOMIC REALITIES, NOTHING BUT A MAJOR INDUSTRY REVERSAL COULD POSSIBLE SAVE THE PLAN ONCE IT GETS INTO THIS CONDITION.

ALTHOUGH AN ACTUARIAL SOUNDNESS STANDARD IS DESIREABLE FROM MANY PERSPECTIVES, THESE ARE IMPORTANT CONTRARY CONSIDERATIONS. THE ENACTMENT OF MINIMUM FUNDING STANDARDS, RATHER THAN MORE STRINGENT "ACTUARIAL SOUNDNESS" STANDARDS, REFLECTS ALL OF THESE CONSIDERATIONS. UNDER THE STANDARDS THAT HAVE BEEN ENACTED, THE SERVICE CAN NOT REQUIRE THAT ANY PLAN BECOME ACTUARIALLY SOUND.

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